

Title 316 WAC

MARINE EMPLOYEES' COMMISSION

Chapters

- 316-02** Rules of practice and procedure—Marine employees' commission.
- 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.
- 316-85** Surveys—Compensation—Benefits—Employment.

Reviser's note: See Title 391 WAC, 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.

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 316-07 RULES OF PROCEDURE

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| <ul style="list-style-type: none"> 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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84.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 | <ul style="list-style-type: none"> (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. |
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Chapter 316-02 WAC

RULES OF PRACTICE AND PROCEDURE—
MARINE EMPLOYEES' COMMISSION

WAC

316-02-001	Application and scope of chapter 316-02 WAC.
316-02-003	Policy—Construction—Waiver.
316-02-005	Commission policy—Labor relations.
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.
316-02-103	Service of process—Additional time after service by mail.
316-02-105	Service of process—Extension of time.
316-02-110	Service of process—By whom served.
316-02-120	Service of process—Upon whom served.
316-02-135	Service of process—Method and completion of service on parties.
316-02-150	Service of process—Filing with commission.
316-02-160	Service of process—Opportunity for hearing.
316-02-170	Service of process—Notice of hearing.
316-02-180	Service of process—Continuances.
316-02-200	Definition of issues—Before hearing.
316-02-210	Definition of issues—Prehearing conference authorized.
316-02-220	Definition of issues—Record of action taken during prehearing conference.
316-02-230	Summary judgment.
316-02-300	Subpoenas—Form—Discovery.
316-02-310	Subpoenas—Issuance to parties.
316-02-340	Subpoenas—Proof of service.
316-02-350	Subpoenas—Quashing.
316-02-360	Subpoenas—Enforcement.
316-02-370	Subpoenas—Geographical scope.
316-02-400	Evidence—Examination of witnesses.
316-02-410	Evidence—Application of rules of evidence.
316-02-420	Evidence—Objections and rulings.
316-02-440	Evidence—Official notice.
316-02-450	Evidence—Stipulations and admissions of record.
316-02-460	Evidence—Submission of documentary evidence.
316-02-470	Evidence—Excerpts from documentary evidence.
316-02-490	Evidence—Refusal of witness to answer.
316-02-500	Declaratory rulings authorized.
316-02-510	Declaratory orders—Petition.
316-02-520	Declaratory orders—Rights and disposition.
316-02-560	Intervention and consolidation of proceedings.
316-02-600	Contested cases includes application for adjudicative proceeding—Exceptions.
316-02-610	Contested cases—Commencement.
316-02-620	Contested cases—Denial of application.
316-02-630	Contested cases—Commission action upon filing.
316-02-640	Contested cases—Ex parte communications.
316-02-650	Commission decisions in contested cases—Form and content.
316-02-660	Commission decisions in contested cases—Service.
316-02-700	Commission structure.
316-02-800	Commission records—Public access.
316-02-810	Commission records—Confidentiality.
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.
316-02-320	Subpoenas—Service. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-320, filed 3/20/84.] Repealed by 90-01-115, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280.
316-02-330	Subpoenas—Fees. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-330, filed 3/20/84.] Repealed by 90-01-115, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280.

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 RCW 47.64.280 and chapter 34.05 RCW, to promulgate comprehensive and uniform rules for practice and procedure before the commission. The provisions of chapter 1-08 WAC shall not be applicable to the proceedings before the commission. 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 10-08 WAC which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapters 316-25, 316-35, 316-45, 316-55, 316-65, and 316-75, except;

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 316-25-070, 316-25-090, 316-35-050, 316-45-050, 316-65-050, and 316-75-110;

(b) WAC 10-08-110, which is supplanted by WAC 316-08-120 through 316-08-180;

(c) WAC 10-08-120, to the extent that it is further limited by WAC 316-02-040 and 316-02-310;

(d) WAC 10-08-140, to the extent that it is further limited by WAC 316-02-040 and 316-02-310;

(e) WAC 10-08-211, which is supplanted by WAC 316-25-390, 316-25-590, 316-25-630, 316-25-670, 316-35-210, 316-35-230, 316-45-350, 316-45-370, 316-65-550, 316-65-555, 316-75-270, and 316-75-290; and

(f) WAC 10-08-230, which is supplanted by WAC 316-02-005, 316-25-150, 316-25-230, 316-25-250, 316-25-270, 316-25-310, 316-35-070, 316-35-150, 316-45-070, 316-45-090, 316-45-230, 316-65-505, 316-65-507, 316-65-515, and 316-75-210.

(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.

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

(8) Chapter 316-85 WAC, which contains rules relating to surveys of compensation, benefits, and conditions of employment required by chapter 47.64 RCW.

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, 90-01-115, § 316-02-001, filed 12/20/89, effective 1/20/90; 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 not specified by statute unless a party shows that it would be prejudiced by such a waiver.

[Statutory Authority: RCW 47.64.280, 90-01-115, § 316-02-003, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-003, filed 3/20/84.]

WAC 316-02-005 Commission policy—Labor relations. It is the policy of the commission to promote bilateral collective bargaining negotiations between and among the Washington state ferry system management, ferry employees, and their exclusive representatives in accordance with chapter 47.64 RCW. These parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into dispute between them. To the extent that the commission and its representatives can assist in fair and harmonious informal settlements of differences, the need for more elaborate and costly adjudicative procedures under all chapters of Title 316 WAC will be diminished.

[Statutory Authority: RCW 47.64.280, 90-01-115, § 316-02-005, filed 12/20/89, effective 1/20/90.]

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

(1) "Adjudicative proceeding" means a proceeding before the commission or its designee in which an opportunity for hearing before the commission is required in the resolution of petitions for investigation of questions concerning representation of ferry system employees, resolution of

petitions for clarification of an existing ferry system employee bargaining unit, complaints charging unfair labor practices in the Washington state ferry system, impasses occurring in the Washington state ferry system of collective bargaining, grievance disputes arising out of interpretation or application of a collective bargaining agreement in the Washington state ferry system, determination of union security disputes arising between Washington state ferry system employees and employee organization certified or recognized as their bargaining representatives. "Adjudicative proceeding" shall not include the process or decision making in salary surveys or other fact-finding surveys by the commission.

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

(3) "Commission" means the marine employees' commission created by RCW 47.64.280 or a majority thereof.

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

(5) "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.

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

(7) "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.

(8) "Filing" of a petition concerning representation of employees or for clarification of a bargaining unit, a complaint charging an unfair labor practice, an impasse resolution, a request for fact-finding, a grievance and/or request for appointment of an arbitrator, assertion of a right of nonassociation, or other similar papers in matters governed by chapter 47.64 RCW, means delivery of such document to the marine employees' commission at its Olympia office.

(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 willful 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. 90-01-115, § 316-02-007, filed 12/20/89, effective 1/20/90; 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.

Nothing in this chapter may be construed as prohibiting a ferry employee from representing himself or herself before the commission.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-010, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-020, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-030, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-040, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-100, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-103, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-105, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-110, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-120, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-120, filed 3/20/84.]

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 served 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. 90-01-115, § 316-02-135, filed 12/20/89, effective 1/20/90; 85-21-059 (Order 85-2), § 316-02-135, filed 10/16/85.]

WAC 316-02-150 Service of process—Filing with commission. Papers intended to be filed with the commission shall be deemed filed upon actual receipt by the commission during its regular office hours at its Olympia office: *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.

Filing a copy of the paper(s), together with one of the following shall constitute proof of service:

- (1) An acknowledgement of service; or
- (2) A certificate that the person signing the certificate did on the date of the certificate serve the paper(s) upon all parties of record in the proceeding by:

(a) Mailing a copy thereof, by restricted certified mail, return receipt requested, to each party to the proceeding or to his or her attorney or authorized agent; or

(b) Delivery of a copy thereof in person.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-150, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-160, filed 12/20/89, effective 1/20/90; 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 not less than seven days before the date set for hearing. The notice shall include:

(1) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(2) The official file or other reference number and the name of the proceeding;

(3) The name, official title, mailing address, and telephone number of the presiding officer;

(4) A statement of the time, place, and nature of the proceeding;

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

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

(7) A short and plain statement of the matters asserted by the commission;

(8) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding, or be represented therein by agent or counsel, may be held in default.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-170, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-180, filed 12/20/89, effective 1/20/90; 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 commission may proceed promptly to conduct the hearing on relevant and material matter only.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-200, filed 12/20/89, effective 1/20/90; 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 commissioner, 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. 90-01-115, § 316-02-210, filed 12/20/89, effective 1/20/90; 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 commissioner 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. 90-01-115, § 316-02-220, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-230, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-230, filed 3/20/84.]

WAC 316-02-300 Subpoenas—Form—Discovery.

(1) Pursuant to RCW 34.05.446 and 47.64.280, the commission or the attorney of record in whose behalf the witness is required to appear may subpoena any ferry employee or employees, or their representatives, or any member or representative of the department, and any witness(es).

(2) The commission on its own motion or at the request of a party may require attendance of witnesses and the production of all pertinent records in any adjudicative proceeding.

(3) Except as otherwise provided by this chapter, the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules.

(4) 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. 90-01-115, § 316-02-300, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-300, filed 3/20/84.]

WAC 316-02-310 Subpoenas—Issuance to parties.

(1) 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.

(2) Attorneys may act under the authority conferred by RCW 34.05.446 (2)(a).

(3) Witnesses in an adjudicatory proceeding shall be paid the same fees and allowances in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, except that the commission shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts.

(4) The person initiating an adjudicative proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-310, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-310, 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 commission or assigned commissioner 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. 90-01-115, § 316-02-340, filed 12/20/89, effective 1/20/90; 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 shall be filed and served on all parties 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. 90-01-115, § 316-02-350, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.260 and chapter 47.64 RCW. 88-10-019 (Order 88-1), § 316-02-350, filed 4/29/88. 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. 90-01-115, § 316-02-360, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-370, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-400, filed 12/20/89, effective 1/20/90; 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 commissioner conducting the hearing shall admit all competent and relevant evidence of probative value. In passing upon the admissibility of evidence, the commissioner 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. 90-01-115, § 316-02-410, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-420, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-420, filed 3/20/84.]

WAC 316-02-440 Evidence—Official notice. The commission or assigned commissioner may take official notice of:

- (1) Any judicially cognizable facts;
- (2) Technical facts within the commissioner's specialized knowledge; and
- (3) Codes or standards that have been so noticed.

Parties shall be notified either before or during hearing or by reference in posthearing reports or findings of the material so noticed and the sources thereof, including any specific data. They shall be afforded opportunity to contest the facts and material so noticed.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-440, filed 12/20/89, effective 1/20/90.]

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, if 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 commission or commissioner 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. 90-01-115, § 316-02-450, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-460, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-470, filed 12/20/89, effective 1/20/90; 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. 90-01-115, § 316-02-490, filed 12/20/89, effective 1/20/90; 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 34.05.240 any interested person may petition the commission or assigned commissioner for a declaratory order with respect to the applicability to specified circumstances only of a rule, order, or statute enforceable by the commission or designated examiner. The petition shall set forth facts and reasons on which the petitioner relies to show:

- (1) That uncertainty necessitating resolution exists;

- (2) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;

- (3) That the uncertainty adversely affects the petitioner;

- (4) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

- (5) That the petition complies with WAC 316-02-510.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-500, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-500, filed 3/20/84.]

WAC 316-02-510 Declaratory orders—Petition. Any person petitioning the commission or assigned commissioner for a declaratory order pursuant to RCW 34.05.240 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 order." 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 of the petition plus one copy for service on each party the petitioner seeks to have bound by any declaratory order shall be filed with the commission.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-510, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-510, filed 3/20/84.]

WAC 316-02-520 Declaratory orders—Rights and disposition. (1) The petitioner for a declaratory order shall enjoy the same rights, privileges and expectations as in any other proceeding before the commission, except as specifically limited by WAC 316-02-500 and 316-02-510.

- (2) Within fifteen days after receipt of a petition for a declaratory order, the commission or designated examiner shall give notice of the petition to all persons to whom notice is required by law or rule, and may give notice to any other person deemed desirable.

- (3) Within thirty days after receipt of a petition for a declaratory order the commission or designated examiner, in writing, shall do one of the following:

- (a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which a declaratory order will be entered; or

(d) Decline to enter a declaratory order, stating the reasons for that action.

(4) The time limits of subsection (3)(b) and (c) of this section may be extended by the commission or designated examiner for good cause.

(5) The commission or designated examiner may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(6) A declaratory order has the same status as any other order entered in a commission or examiner adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for the conclusions.

[Statutory Authority: RCW 47.64.280. 92-22-044, § 316-02-520, filed 10/27/92, effective 11/27/92; 90-01-115, § 316-02-520, filed 12/20/89, effective 1/20/90.]

WAC 316-02-560 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 except resolution of impasse in reaching collective bargaining agreement, 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) Consolidation: 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.

(4) This general rule on intervention and consolidation of proceedings may be superseded by specific requirements in certain chapters.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-560, filed 12/20/89, effective 1/20/90.]

WAC 316-02-600 Contested cases includes application for adjudicative proceeding—Exceptions. An application for the commission to investigate, and enter an order thereon, a question concerning (1) representation of ferry system employees, (2) clarification of an existing collective bargaining unit, (3) a complaint charging an unfair labor practice, (4) a grievance based upon alleged violation of rights granted by statute, rule or collective bargaining agreement, (5) union security dispute, or (6) other ferry system labor-management relations disputes, includes an application for the commission to conduct an appropriate adjudicative proceeding whether or not the applicant, complainant, petitioner or grievant expressly requests such proceeding: *Provided*, That an application for nomination of mediator(s) or arbitrators of impasse(s) in interest arbitration or grievance arbitration from a panel maintained for that purpose in accordance with RCW 47.64.210 or 47.64.240, and/or questions concerning fact-finding procedures or data shall not be deemed to be adjudicative in nature.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-600, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-600, filed 3/20/84.]

WAC 316-02-610 Contested cases—Commencement. An adjudicative proceeding commences when the commission, or assigned commissioner, or the administrative assistant to the commission notifies a party that a prehearing conference, hearing or other stage of an adjudicative proceeding will be conducted.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-610, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-610, filed 3/20/84.]

WAC 316-02-620 Contested cases—Denial of application. If the commission decides not to conduct an adjudicative proceeding in response to a complaint, petition or grievance, the commission shall serve the complainant, petitioner or grievant with a copy of its decision in writing, with a brief statement of the reason(s) for the commission's denial: *Provided*, That the commission shall advise said complainant, petitioner or grievant as to the appropriate review of such denial: *And further provided*, That unless the complainant, petitioner or grievant files a request for review within thirty days following receipt of the denial, the denial shall be entered as an order which shall be final and binding in accordance with RCW 47.64.280.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-620, filed 12/20/89, effective 1/20/90.]

WAC 316-02-630 Contested cases—Commission action upon filing. Upon receipt of an application for adjudicative proceeding under WAC 316-02-600, other than a declaratory order, the commission shall proceed as follows:

(1) Except in situations governed by subsection (2) or (3) of this section, within thirty days after receipt of the application or of the response to a timely request made by the commission under subsection (2) of this section, the commission shall commence an adjudicative proceeding in accordance with the appropriate chapter of these rules, or shall deny the application in accordance with WAC 316-02-620; or

(2) Within thirty days after receipt of the application, the commission shall notify the complainant, petitioner or grievant of any obvious errors or omissions, request any additional information the commission requires to make an initial determination scope or jurisdiction and is permitted by law to require, and shall notify said complainant, petitioner or grievant of the name, mailing address, and telephone number of an office that may be contacted regarding the application; or

(3) If the application seeks relief that is not available when the application is filed but may be available in the future, the commission may maintain the application on the commission's docket awaiting the expected availability of relief and shall notify the complainant, petitioner or grievant of the status of the application.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-630, filed 12/20/89, effective 1/20/90.]

WAC 316-02-640 Contested cases—Ex parte communications. (1) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining orderly process, neither the commission nor any commissioner nor employee of the commission may communicate, directly or indirectly, regarding any issue in an adjudicative proceeding, with any person not employed by the commission who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(2) Unless necessary to procedural aspects of maintaining orderly process, persons to whom the commission or commissioner may not communicate under subsection (1) of this section, may not communicate with commissioners without notice and opportunity for all parties to participate.

(3) If a commissioner receives an ex parte communication of a type that cannot properly be received, that commissioner shall promptly disclose the communication in the manner prescribed in RCW 34.05.455 (5), (6), and (7).

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-640, filed 12/20/89, effective 1/20/90.]

WAC 316-02-650 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. 90-01-115, § 316-02-650, filed 12/20/89, effective 1/20/90.]

WAC 316-02-660 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. 90-01-115, § 316-02-660, filed 12/20/89, effective 1/20/90.]

WAC 316-02-700 Commission structure. (1) The marine employees' commission, its staff and/or any designated representative maintains an impartial role in all proceedings involving the Washington state ferry system, its employees and their representatives, ferry users, and the general public.

(2) The commission consists of three members, appointed by the governor with the advice and consent of the senate: One member appointed from labor, one member from industry and one public member who has significant knowledge of maritime affairs and who is chairman of the commission. The commission reserves unto itself all policy making functions. The members serve on a part-time basis. The commission may preside over adjudicative proceedings or may designate one of its members to preside. In the event that a single commissioner or other person acts as presiding officer, the commission is the appellate tribunal. Orders of the commission are final and binding upon the parties in accordance with RCW 47.64.280.

(3) The administrative assistant appointed by the commission is the agency manager with authority to act in administrative and personnel matters. Authority is delegated to the administrative assistant to investigate complaints, conduct such hearings as permitted by statute and rule, conduct salary surveys, conduct employee representation elections, and generally act as the representative of and for the part-time commission.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-700, filed 12/20/89, effective 1/20/90.]

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. 90-01-115, § 316-02-800, filed 12/20/89, effective 1/20/90; 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 and other labor-management relations processes, 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. 90-01-115, § 316-02-810, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-810, filed 3/20/84.]

WAC 316-02-820 Commission offices. The commission maintains its office at Evergreen Plaza Building, PO Box 40902, Olympia, Washington 98504-0902. The telephone number is (206) 586-6354.

[Statutory Authority: RCW 47.64.280. 92-22-044, § 316-02-820, filed 10/27/92, effective 11/27/92; 90-01-115, § 316-02-820, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.260 and chapter 47.64 RCW. 88-10-019 (Order 88-1), § 316-02-820, filed 4/29/88. 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. 90-01-115, § 316-02-900, filed 12/20/89, effective 1/20/90; 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 words "petition for rule making."

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.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-910, filed 12/20/89, effective 1/20/90; 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. Each petition shall be considered by the commission. 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. 90-01-115, § 316-02-920, filed 12/20/89, effective 1/20/90; 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. If the commission denies the petition, the denial shall be served upon the petitioner.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-930, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-930, filed 3/20/84.]

Chapter 316-25 WAC

MARINE EMPLOYEES' REPRESENTATION CASE RULES

WAC

316-25-001	Scope—Contents—Other rules.
316-25-010	Petition for investigation of a question concerning representation of employees—Who may file.
316-25-030	Petition—Time for filing.
316-25-050	Petition form—Number of copies—Filing—Service.
316-25-070	Contents of petition.
316-25-090	Contents of petition filed by department.
316-25-110	Supporting evidence.
316-25-130	List of employees.
316-25-140	Notice to employees.
316-25-150	Amendment and withdrawal.
316-25-170	Intervention—By incumbent representative.
316-25-190	Intervention—By organization other than incumbent.
316-25-210	Showing of interest confidential.
316-25-220	Prehearing conferences.
316-25-230	Election agreements.
316-25-250	Cross-check agreements.
316-25-270	Supplemental agreements.
316-25-290	Notice of hearing.
316-25-310	Hearings—Who shall conduct.
316-25-330	Authority of hearing officer.
316-25-350	Hearings—Nature and scope.
316-25-370	Blocking charges—Suspension of proceedings—Request to proceed.
316-25-390	Proceedings before a hearing officer.
316-25-410	Cross-check of records.
316-25-430	Notice of election.
316-25-450	Disclaimers.
316-25-470	Electioneering.
316-25-490	Election procedures—Balloting.
316-25-510	Challenged ballots.
316-25-530	Votes needed to determine election.
316-25-550	Tally sheet.
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 10-08 WAC which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 316-25 WAC, except:

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

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

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

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

(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 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.

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

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-001, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-001, filed 3/20/84.]

WAC 316-25-010 Petition for investigation of a question concerning representation of employees—Who may file. A petition for investigation of a question concerning representation of employees, 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 and 34.05.220. 90-01-116, § 316-25-010, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-010, filed 3/20/84.]

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

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

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

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-030, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-030, filed 3/20/84.]

WAC 316-25-050 Petition form—Number of copies—Filing—Service. Each petition shall be prepared on a form furnished by the commission or shall be prepared in conformance with WAC 316-25-070. The original 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 and 34.05.220. 90-01-116, § 316-25-050, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-050, filed 3/20/84.]

WAC 316-25-070 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 ferry system employees.

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

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

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

(5) Any other relevant facts.

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

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

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-070, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-070, filed 3/20/84.]

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

(1) Each petition filed by the department shall contain a statement that the department has been presented with a

demand by an organization seeking recognition as the exclusive representative of the employees in the bargaining unit described in the petition.

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

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

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-090, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-090, filed 3/20/84.]

WAC 316-25-110 Supporting evidence. The original petition 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. Such authorization cards shall not be valid unless signed and dated during the one hundred eighty-day period preceding the filing of the petition or the filing of such evidence with the commission, whichever is later.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-110, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-110, filed 3/20/84.]

WAC 316-25-130 List of employees. The department 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 and 34.05.220. 90-01-116, § 316-25-130, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-130, filed 3/20/84.]

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

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-140, filed 12/20/89, effective 1/20/90.]

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

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

WAC 316-25-170 Intervention—By incumbent representative. An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year 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 and 34.05.220. 90-01-116, § 316-25-170, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-170, filed 3/20/84.]

WAC 316-25-190 Intervention—By organization other than incumbent. An organization not covered by WAC 316-25-170 may, by motion, intervene in proceedings under this chapter and, upon granting of its motion for intervention, 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. Such authorization cards shall not be valid unless signed and dated during the one hundred eighty-day period preceding the filing of such evidence with the commission. The showing of interest shall be made confidentially to the commission at or before the time the motion for intervention is made: *Provided, however,* That a motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the commission may impose to avoid undue delay of the proceedings. No motion for intervention 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 and 34.05.220. 90-01-116, § 316-25-190, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-190, filed 3/20/84.]

WAC 316-25-210 Showing of interest confidential. The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the commission and may not be litigated at any hearing. The commission shall not disclose the identities of employees whose authorization cards or letters are filed in support of a petition or motion for intervention. 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 and 34.05.220. 90-01-116, § 316-25-210, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-210, filed 3/20/84.]

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

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-220, filed 12/20/89, effective 1/20/90.]

WAC 316-25-230 Election agreements. Where the department and all other parties agree on a representation election, they may file an election agreement with the commission. 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 representative(s) 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 and 34.05.220. 90-01-116, § 316-25-230, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-230, filed 3/20/84.]

WAC 316-25-250 Cross-check agreements. 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 and 34.05.220. 90-01-116, § 316-25-250, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-250, filed 3/20/84.]

WAC 316-25-270 Supplemental agreements. Where the parties are able to agree generally on the matters to be set forth in an election agreement under WAC 316-25-230 or a cross-check agreement under WAC 316-25-250, but are unable to agree on limited issues concerning the definition of the bargaining unit or employee eligibility, they may expedite the determination of the question concerning representation while reserving their disagreement for subsequent determination by filing a supplemental agreement under this rule together with an agreement under WAC 316-25-230 or 316-25-250. 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 and 34.05.220. 90-01-116, § 316-25-270, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-270, filed 3/20/84.]

WAC 316-25-290 Notice of hearing. After a petition has been filed, if it appears to the commission that there is reasonable cause to believe that a question concerning representation exists, 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 the commission or an assigned commissioner 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 at any time before the close of the hearing.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-290, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-290, filed 3/20/84.]

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

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-310, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-310, filed 3/20/84.]

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

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule on objections to evidence and offers of proof, receive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized by these rules.

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

WAC 316-25-350 Hearings—Nature and scope. Hearings 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 chapter 47.64 RCW and these rules.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-350, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-350, filed 3/20/84.]

WAC 316-25-370 Blocking charges—Suspension of proceedings—Request to proceed. (1) Where 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 and 34.05.220. 90-01-116, § 316-25-370, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-370, filed 3/20/84.]

WAC 316-25-390 Proceedings before a hearing officer. The hearing officer may proceed 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 and 34.05.220. 90-01-116, § 316-25-390, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-390, filed 3/20/84.]

WAC 316-25-410 Cross-check of records. 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 and 34.05.220. 90-01-116, § 316-25-410, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-410, filed 3/20/84.]

WAC 316-25-430 Notice of election. When an election is to be conducted, the commission 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 and 34.05.220. 90-01-116, § 316-25-430, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-430, filed 3/20/84.]

WAC 316-25-450 Disclaimers. An organization may file a disclaimer and have its name removed from the ballot: *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 and 34.05.220. 90-01-116, § 316-25-450, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-450, filed 3/20/84.]

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

(2) There 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 and 34.05.220. 90-01-116, § 316-25-470, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-470, filed 3/20/84.]

WAC 316-25-490 Election procedures—Balloting. All elections 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 and 34.05.220. 90-01-116, § 316-25-490, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-490, filed 3/20/84.]

WAC 316-25-510 Challenged ballots. Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in the election. No person 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 assigned commissioner. 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. An assigned commissioner 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 commissioner 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 and 34.05.220. 90-01-116, § 316-25-510, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-510, filed 3/20/84.]

WAC 316-25-530 Votes needed to determine election. (1) Unit determination elections 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 and 34.05.220. 90-01-116, § 316-25-530, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-530, filed 3/20/84.]

WAC 316-25-550 Tally sheet. 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 and 34.05.220. 90-01-116, § 316-25-550, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-550, filed 3/20/84.]

WAC 316-25-570 Procedure following inconclusive election. In any election in which there are more than two choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a 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 which would 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 and 34.05.220. 90-01-116, § 316-25-570, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-570, filed 3/20/84.]

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

file objections with the commission. Objections may consist of:

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

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

Objections 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 copy 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 and 34.05.220. 90-01-116, § 316-25-590, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-590, filed 3/20/84.]

WAC 316-25-610 Procedure where no objections are filed. If no objections are filed within the time set forth above, and if any challenged ballots are insufficient in number to affect the determination of the question concerning representation, and if no 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 and 34.05.220. 90-01-116, § 316-25-610, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-610, filed 3/20/84.]

WAC 316-25-630 Procedure where objections are filed. (1) Objections to conduct improperly affecting the results of an election shall be referred to a commissioner 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 the commissioner. 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 and 34.05.220. 90-01-116, § 316-25-630, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-630, filed 3/20/84.]

WAC 316-25-650 Briefs and written arguments on objections. All parties 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 latter of:

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

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

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

(2) The commission or assigned commissioner may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established.

The original 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. If a party presents an issue which requires study of a statute, rule, regulation, or finding of fact, the party should set out the material portions of the text verbatim or include them by facsimile copy in the text or in an appendix to the brief.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-650, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-650, filed 3/20/84.]

WAC 316-25-670 Commission action on objections.

In all cases where objections have been filed, the entire record in the proceedings 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 and 34.05.220. 90-01-116, § 316-25-670, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-670, filed 3/20/84.]

Chapter 316-35 WAC

MARINE EMPLOYEES' UNIT CLARIFICATION CASE RULES

WAC

316-35-001	Scope—Contents—Other rules.
316-35-010	Petition for clarification of an existing bargaining unit—Who may file.
316-35-030	Petition form—Number of copies—Filing—Service.
316-35-050	Contents of petition.
316-35-070	Amendment and withdrawal.
316-35-090	Notice of hearing.
316-35-110	Consolidation of proceedings.
316-35-130	Hearings—Who shall conduct.
316-35-150	Authority of hearing officer.
316-35-160	Prehearing conferences.
316-35-170	Hearings—Nature and scope.
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 10-08 WAC which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 316-35 WAC, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 316-35-050;

(b) WAC 10-08-211, which is supplanted by WAC 316-35-210 and 316-35-230; and

(c) WAC 10-08-230, which is supplanted by WAC 316-35-070 and 316-35-160.

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

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

(4) Chapter 316-45 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 and 34.05.220. 90-01-117, § 316-35-001, filed 12/20/89, effective 1/20/90. 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(s) may be filed by the department of transportation, (an) exclusive representative(s) of ferry system employees or its/their agents, or by the parties jointly.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-010, filed 12/20/89, effective 1/20/90. 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(s) shall be prepared on a form furnished by the commission or shall be prepared in conformance with WAC 316-35-050. The original petition shall be filed with the commission 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 and 34.05.220. 90-01-117, § 316-35-030, filed 12/20/89, effective 1/20/90. 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(s) shall contain:

(1) The name and address of the department and the name and title, if known, address and telephone number of the person designated by the department as the official representative for adjudicatory proceedings under chapter 47.64 RCW.

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

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

(4) Identification of the proceeding in which any certification of representatives was issued or the date of the recognition agreement(s), and the history of any modifications of the bargaining unit(s) 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 collective bargaining agreement(s), 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 the title(s), if any, of the petitioner(s) and/or his/their representative(s) and his/their title(s).

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-050, filed 12/20/89, effective 1/20/90. 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 and 34.05.220. 90-01-117, § 316-35-070, filed 12/20/89, effective 1/20/90. 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. The hearing notice shall contain:

(1) The name(s), address(es) and telephone number(s) of the person(s) who filed the petition, and their representative(s) or counsel and their title(s), if known, and their address(es) and telephone number(s);

(2) The name(s), address(es) and telephone number(s) of the exclusive bargaining unit(s) which the petitioner(s) want(s) clarified, and its/their principal representative(s) and titles, if known, and their addresses and telephone numbers;

(3) The name, title, address, and telephone number of the person designated by the department as the official recipient of notices involving adjudicatory proceedings under chapter 47.64 RCW;

(4) The official case number for the proceeding;

(5) The name, mailing address, and telephone number of the commissioner who is to be the presiding officer in the hearing;

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

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

(8) A reference to the particular sections of the statute(s) and/or rule(s) involved;

(9) A short and plain statement of the matter to be heard, as asserted by the commission;

(10) An enumeration of the organizations and/or persons to whom copies of the notice are being provided;

(11) A statement that the commission(er) will take official notice of the applicable collective bargaining agreement(s), if any, in effect at the time of the petition;

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

(13) A statement that a party who fails to attend or participate, personally or by agent or counsel, in the hearing or other stage of the proceeding may be held in default.

Any such notice may be amended or withdrawn prior to the close of the hearing.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-090, filed 12/20/89, effective 1/20/90. 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 unit clarification under WAC 316-35-010 is pending at the same time as another petition involving all or any part of the same bargaining units and/or a petition for investigation of a question concerning representation filed pursuant to WAC 316-25-010 is/are filed, the proceedings shall be consolidated and all issues concerning the description of the bargaining units shall be resolved in the consolidated proceedings.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-110, filed 12/20/89, effective 1/20/90. 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 or by a member of the commission 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 and 34.05.220. 90-01-117, § 316-35-130, filed 12/20/89, effective 1/20/90. 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 and 34.05.220. 90-01-117, § 316-35-150, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-150, filed 3/20/84.]

WAC 316-35-160 Prehearing conferences. The commission may conduct prehearing conferences to discuss with the parties all contested issues of law and fact which may arise in unit clarification cases. The parties are encouraged to reach binding stipulations on all issues during the course of a prehearing conference. Such stipulations are to be embodied in proposed commission unit clarification orders, amendments to collective bargaining agreement security clauses, or other appropriate agreements.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-160, filed 12/20/89, effective 1/20/90.]

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 unless the proceeding has been consolidated with another petition in accordance with WAC 316-35-110. 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 chapter 47.64 RCW and these rules.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-170, filed 12/20/89, effective 1/20/90. 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. An assigned commissioner 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 and 34.05.220. 90-01-117, § 316-35-190, filed 12/20/89, effective 1/20/90. 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 an assigned commissioner 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 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 department and 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 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 assigned commissioner may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made 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 and 34.05.220. 90-01-117, § 316-35-210, filed 12/20/89, effective 1/20/90. 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 and 34.05.220. 90-01-117, § 316-35-230, filed 12/20/89, effective 1/20/90. 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 assigned commissioner 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 enter appropriate orders, which shall be final and binding upon the parties in accordance with RCW 47.64.280.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-250, filed 12/20/89, effective 1/20/90. 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

316-45-001	Scope—Contents—Other rules.
316-45-003	Unfair labor practices—Defined.
316-45-010	Complaint charging unfair labor practices—Who may file.
316-45-020	Unfair labor practice complaint—Time limitations.
316-45-030	Complaint—Number of copies—Filing—Service.
316-45-050	Contents of complaint charging unfair labor practices.
316-45-070	Amendment.
316-45-090	Withdrawal.
316-45-110	Initial processing of complaint.
316-45-130	Examiner—Who may act.
316-45-150	Authority of examiner.
316-45-170	Notice of hearing.
316-45-190	Answer—Filing and service.
316-45-210	Answer—Contents and effect of failure to answer.
316-45-230	Amendment of answer.
316-45-250	Motion to make complaint more definite and certain.
316-45-270	Hearings—Nature and scope.

316-45-290	Briefs and proposed findings.
316-45-310	Unfair labor practice—Decision.
316-45-330	Withdrawal or modification of examiner decision.
316-45-350	Petition for review of examiner decision.
316-45-370	Filing and service of cross-petition for review.
316-45-390	Commission action.
316-45-410	Unfair labor practice remedies.
316-45-430	Motion for temporary relief.
316-45-550	Collective bargaining—Mandatory subjects.

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

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 316-45-050;

(b) WAC 10-08-211, which is supplanted by WAC 316-45-350 and 316-45-370; and

(c) WAC 10-08-230, which is supplanted by WAC 316-45-070, 316-45-090, and 316-45-260.

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

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

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

(5) Chapter 316-55 WAC, which contains rules relating to 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.

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

(8) Chapter 316-85 WAC, which contains rules relating to surveys of compensation, benefits and conditions of employment required by chapter 47.64 RCW.

[Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-001, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-001, filed 3/20/84.]

WAC 316-45-003 Unfair labor practices—Defined.

(1) It is an unfair labor practice for ferry system management or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by chapter 47.64 RCW;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: *Provided*, That subject to rules made by the commission pursuant to RCW 47.64.130 and 47.64.280 an employer shall not be prohibited from

permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160: *Provided*, That nothing prohibits ferry system management from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony concerning subjects covered by chapter 47.64 RCW;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter: *Provided*, That this paragraph does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, when it is the representative of employees subject to RCW 47.64.170.

(3) The rights guaranteed by chapter 47.64 RCW include:

(a) The right of self-organization, including the right to form, join, or assist a labor organization;

(b) The right to bargain collectively through a representative freely chosen by the employees themselves;

(c) The right to engage in other concerted activities for collective bargaining or for mutual aid or protection; or

(d) The right to refrain from concerted activity. The right to refrain from concerted activities is limited to the extent that lawful union security agreements may be enforced.

(4) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit.

[Statutory Authority: RCW 47.64.280. 92-22-044, § 316-45-003, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-003, filed 12/20/89, effective 1/20/90.]

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 and 34.05.250. 90-01-118, § 316-45-010, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-010, filed 3/20/84.]

WAC 316-45-020 Unfair labor practice complaint—Time limitations. (1) Unless otherwise specified in statute or rule, a complaint charging an unfair labor practice may not be filed later than one hundred eighty calendar days after the party filing such complaint knew or should have known of the event, activity, or practice alleged to be violations of protected rights under RCW 47.64.130 and WAC 316-45-003. For the purpose of computing timeliness of complaints, each event, activity, or practice in a series of identical or similar practices may be construed as a separate instance: *Provided*, That the commission shall only consider those events, activities, or practices which have occurred no earlier than one hundred eighty days prior to the filing of the complaint unless the statute of limitations are deemed to be tolled pursuant to subsection (3) of this section.

(2) Where the event, activity, or practice is alleged to be a violation of a collective bargaining agreement in addition to violating rights protected by chapter 47.64 RCW, and the complainant chooses also to file a request for grievance arbitration pursuant to RCW 47.64.150, the statute of limitations herein run only after the remedies available in the contractual grievance procedures have been exhausted. The commission may accept the final resolution of the grievance arbitration process and defer to that decision. If the commission determines that the grievance procedure did not satisfactorily resolve the entire charge of unfair labor practice, the commission may resume processing the remaining unfair labor practice issue(s).

(3) The limitation period specified in subsection (2) of this section may be tolled where the charging party did not have actual or constructive knowledge of the alleged unfair labor practice. In the instance that the respondent has engaged in fraudulent concealment and/or deception as to its unlawful conduct, the commission may determine the limitation tolled, both as to the filing of the complaint and as to the remedy.

[Statutory Authority: RCW 47.64.280. 92-22-044, § 316-45-020, filed 10/27/92, effective 11/27/92.]

WAC 316-45-030 Complaint—Number of copies—Filing—Service. Charges shall be in writing, in the form of a complaint of unfair labor practices. The original copy of the complaint 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 and 34.05.250. 90-01-118, § 316-45-030, filed 12/20/89, effective 1/20/90. 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 subsections of RCW 47.64.130 and/or WAC 316-45-003 alleged to have been violated.

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

(6) The signature and, if any, the title of the person filing the complaint.

[Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-050, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-070, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-090, filed 12/20/89, effective 1/20/90. 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 an assigned commissioner shall determine whether the facts as alleged may constitute an unfair labor practice within the meaning of RCW 47.64.130 and WAC 316-45-003. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, the commission or commissioner shall issue and cause to be served on all parties an order of dismissal containing the reasons therefor; otherwise, the commission or commissioner shall cause the contents of the charge to be issued and served as a complaint of unfair labor practices. An order of dismissal issued pursuant to this section by an examiner other than the commission shall be subject to a petition for review as provided in WAC 316-45-350.

[Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-110, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.260 and chapter 47.64 RCW. 88-10-019 (Order 88-1), § 316-45-110, filed 4/29/88. 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 the commission or a member of the commission 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 and 34.05.250. 90-01-118, § 316-45-130, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-150, filed 12/20/89, effective 1/20/90. 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. Notwithstanding WAC 316-02-170, at least twenty days prior to a 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 and 34.05.250. 90-01-118, § 316-45-170, filed 12/20/89, effective 1/20/90. 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. Each respondent shall, on or before the date specified therefor in the notice of hearing, file with the examiner the original copy of its answer to the complaint, and shall serve a copy on the complainant.

[Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-190, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-210, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-230, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-250, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-270, filed 12/20/89, effective 1/20/90. 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 commission or assigned commissioner 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. The original copy of a brief or proposed finding shall be filed with the commission or

commissioner and a copy shall be served upon all other parties.

[Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-290, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-290, filed 3/20/84.]

WAC 316-45-310 Unfair labor practice—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. If the examiner is a single member of the commission, he/she shall file the original decision with the commission and shall cause a copy thereof to be served on each of the parties. Any party may file a petition for review thereof with the commission. If the commission is the examiner, the decision and order shall be entered and shall be served on all parties and the commission decision shall be final and binding upon the parties in accordance with RCW 47.64.280.

[Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-310, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-330, filed 12/20/89, effective 1/20/90. 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 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 and 34.05.250. 90-01-118, § 316-45-350, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-370, filed 12/20/89, effective 1/20/90. 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 and 34.05.250. 90-01-118, § 316-45-390, filed 12/20/89, effective 1/20/90. 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 upon the preponderance of evidence the commission or commissioner shall conclude that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the commission or commissioner shall state its findings of fact and cause to be served on such person an order requiring him or her to cease and desist from such unfair labor practice and to take such affirmative and corrective action as necessary to effectuate the policies of RCW 47.64.005 and 47.64.006, including but not limited to reinstatement of employees with or without back pay. In calculating back pay orders, the following shall apply:

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

(2) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee(s) may have received during the period of the violation, and the 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 and 34.05.250. 90-01-118, § 316-45-410, filed 12/20/89, effective 1/20/90. 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 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 shall expedite the processing of the matter under WAC 316-45-110.

(3) After the determination of the commission that the complaint states a cause of action, any complainant desiring temporary relief may file with the commission 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 commission 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 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 and 34.05.250. 90-01-118, § 316-45-430, filed 12/20/89, effective 1/20/90. 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—Mandatory subjects. 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 and 34.05.250. 90-01-118, § 316-45-550, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.260 and chapter 47.64 RCW. 88-10-019 (Order 88-1), § 316-45-550, filed 4/29/88. 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.
316-55-005	Impasse procedures—Duty to adopt.
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—Mediation—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.
316-55-120	Impasse resolution—Expenses.
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.
316-55-517	Arbitration panel chairman—Qualifications—Replacement.
316-55-525	Conduct of interest arbitration.
316-55-600	Central filing of agreements.
316-55-700	Result of collective bargaining agreements—If budget or fares exceeded.
316-55-710	Collective bargaining agreements stayed.
316-55-730	Commission action.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

316-55-520	Intervention and consolidation of proceedings. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-520, filed 3/20/84.] Repealed by 90-06-047, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 47.64.280.
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WAC 316-55-001 Scope—Contents—Other rules. This chapter governs activities of and proceedings before the

marine employees' commission relating to the resolution of impasses occurring in collective bargaining. This chapter does not contemplate, and does not provide procedures for, direct involvement of the commission in the investigation and/or settlement of contested cases between parties. The assistance rendered by the commission to the parties at impasse during collective bargaining, and the commission's review of compliance with fiscal limitations are not adjudicatory in nature and are not governed by RCW 34.05.425 or 34.12.020 or chapter 10-08 WAC. Such assistance and/or review of compliance are deemed to be ministerial acts prescribed by RCW 47.64.170 through 47.64.240. However, insofar as the collective bargaining process is related to bargaining unit recognition and clarification, to fair representation of ferry employees, to alleviation of ferry employee grievances, and to fact-finding survey procedures and requests, 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.

(7) Chapter 316-85 WAC, which contains rules relating to fact-finding surveys of compensation, benefits, and conditions of employment.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-001, filed 3/2/90, effective 4/2/90; 84-07-037 (Resolution No. 84-01), § 316-55-001, filed 3/20/84.]

WAC 316-55-005 Impasse procedures—Duty to adopt. As the first step in the performance of their duty to bargain, the ferry system management and the ferry employee organization shall endeavor to agree upon impasse procedures. Said agreement shall provide for implementation of those impasse procedures not later than July 1st in each odd-numbered year following enactment of the biennial budget. If the parties fail to agree upon impasse procedures by July 1st, the impasse procedures provided in WAC 316-55-010 through 316-55-600 shall apply.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-005, filed 3/2/90, effective 4/2/90.]

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. A copy of such request shall be served upon the other party.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-010, filed 3/2/90, effective 4/2/90; 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) Clear and concise statement of the disputed issues and the parties' positions in relation thereto;
- (4) A description of the size and composition of the bargaining unit involved;
- (5) The expiration date of any collective bargaining agreement then in effect or recently expired;
- (6) Any other relevant information; and
- (7) The name, signature, and capacity of each officer, agent, attorney, or other individual acting for the filing party or parties.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-020, filed 3/2/90, effective 4/2/90; 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 qualified, impartial, and disinterested person to act as mediator. 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. 90-06-047, § 316-55-030, filed 3/2/90, effective 4/2/90; 84-07-037 (Resolution No. 84-01), § 316-55-030, filed 3/20/84.]

WAC 316-55-050 Impasse resolution—Mediation—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. 90-06-047, § 316-55-050, filed 3/2/90, effective 4/2/90; 84-07-037 (Resolution No. 84-01), § 316-55-050, filed 3/20/84.]

WAC 316-55-070 Impasse resolution—Function of mediator. It is the function of the mediator to bring the parties together to effectuate a settlement of the dispute. 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.

(1992 Ed.)

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-070, filed 3/2/90, effective 4/2/90; 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. 90-06-047, § 316-55-090, filed 3/2/90, effective 4/2/90; 84-07-037 (Resolution No. 84-01), § 316-55-090, filed 3/20/84.]

WAC 316-55-110 Impasse resolution—Dispute resolution panel. (1) The commission shall establish and maintain a panel of qualified mediators/arbitrators and shall make a list of members of that panel available to parties for their use in selecting a mediator, a neutral chairman for an arbitration panel, a grievance arbitrator, a fact-finder or an ad hoc interest arbitrator.

(2) Any person may apply for membership on the panel; but the commission, in compiling and maintaining a panel of arbitrators, shall require each applicant to submit a resume, which includes but is not limited to:

(a) A complete list of the applicant's cases in the most recent five-year period, with dates, names and addresses of parties, issues involved, whether the applicant acted as advocate, mediator, or arbitrator and other pertinent information;

(b) Whether or not and in what capacity, within the past five years the applicant has been employed by the department of transportation or by an organization representing employees in the department;

(c) Whether or not and in what capacity within the past five years a close relative of the applicant has been employed by the department or by an organization representing employees in the department.

(3) The commission shall require members of the panel to update their resumes biennially.

(4) When referring mediators/arbitrators from its dispute resolution panel to the parties, the commission shall provide the parties with the background data submitted by the respective mediators/arbitrators in accordance with subsection (2) of this section. However, the commission shall not be responsible for the validity or accuracy of the data so provided.

(5) The commission shall maintain a log of those persons referred to the parties as a possible mediator or arbitrator or chairman of an arbitration panel under WAC 316-55-515(5), including dates, parties involved in the dispute, issues, whether or not the person was acceptable to the parties, was used as mediator or arbitrator, or was rejected. The log shall be available for public inspection.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-110, filed 3/2/90, effective 4/2/90; 84-07-037 (Resolution No. 84-01), § 316-55-110, filed 3/20/84.]

WAC 316-55-120 Impasse resolution—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 fees and expenses of a single arbitrator or of the chairman of a panel of arbitrators shall be

[Title 316 WAC—p 27]

shared equally by the parties. Fees and expenses of witnesses shall be paid by the party for whom they testify. Fees and expenses of persons called or subpoenaed by a single arbitrator or a chairman of a panel shall be shared equally by the parties. Costs of meeting in a neutral site, of recording and transcription of proceedings, and of other necessary joint activities shall be shared equally by the parties.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-120, filed 3/2/90, effective 4/2/90.]

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. 90-06-047, § 316-55-130, filed 3/2/90, effective 4/2/90; 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. 90-06-047, § 316-55-150, filed 3/2/90, effective 4/2/90; 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 as required by RCW 47.64.220 in the manner and procedure described in chapter 316-85 WAC. 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. 90-06-047, § 316-55-160, filed 3/2/90, effective 4/2/90; 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. 90-06-047, § 316-55-170, filed 3/2/90, effective 4/2/90; 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. That arbitration shall be binding upon the parties in accordance with RCW 47.64.240. The parties shall notify the commission in writing. 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 organization party to the impasse and the name, address and telephone number of that party's principal representative in the negotiations;

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

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

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

(6) Any other relevant information; and

(7) The name, signature and capacity of each officer, agent, attorney or other representative acting for the filing party or parties.

The original 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 impasse. 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. 90-06-047, § 316-55-500, filed 3/2/90, effective 4/2/90; 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, each party shall submit to the other party and to the arbitrator, if said arbitrator has been selected or impanelled, and to the commission, within four days of arbitration request, a final offer on the impasse items 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. Unless clearly indicated otherwise by context, the word arbitrator shall mean a single arbitrator or a panel of arbitrators impanelled in accordance with RCW 47.64.240 (4) and (5) and WAC 316-55-515.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-505, filed 3/2/90, effective 4/2/90; 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. 90-06-047, § 316-55-510, filed 3/2/90, effective 4/2/90; 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, the parties shall notify the commission in accordance with WAC 316-55-500. A list of seven arbitrators shall be submitted to the parties by the marine employees' commission immediately. 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. All contacts and/or arrangements between the parties and an arbitrator selected under this rule will be the responsibility of the parties. 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) No person shall serve as an arbitrator in any proceeding in which he/she has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

(6) No final award may be made by the panel until three arbitrators have been chosen.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-515, filed 3/2/90, effective 4/2/90; 84-07-037 (Resolution No. 84-01), § 316-55-515, filed 3/20/84.]

WAC 316-55-517 Arbitration panel chairman—Qualifications—Replacement. When submitting names of persons to the parties from which the chairman of a panel of arbitrators will be selected under RCW 47.64.240 and WAC 316-55-515, the commission shall furnish biographical information, background, qualifications and experience, including references and a list of cases wherein the person acted as advocate, or as mediator or arbitrator within the most recent five-year period, for each of the seven names supplied to the parties. If one or more of those named is unavailable to accept appointment as chairman of the arbitration panel, or must be disqualified, a substitute name(s) will be provided upon the joint request of the parties. If all of those persons named by the commission are

rejected by the parties, a second list will be provided upon the joint request of the parties.

[Statutory Authority: RCW 47.64.280. 90-06-047, § 316-55-517, filed 3/2/90, effective 4/2/90.]

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 chapter 47.64 RCW.

(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 public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable work but not necessarily identical 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 RCW 47.64.180 and 47.64.190. 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, 90-06-047, § 316-55-525, filed 3/2/90, effective 4/2/90; 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, 90-06-047, § 316-55-600, filed 3/2/90, effective 4/2/90; 84-07-037 (Resolution No. 84-01), § 316-55-600, filed 3/20/84.]

WAC 316-55-700 Result of collective bargaining agreements—If budget or fares exceeded. If the secretary of transportation finds that the cumulative fiscal requirements of all bargaining agreements and arbitration orders will exceed the budgetary and fare restrictions imposed by RCW 47.64.180, and so notifies the commission in accordance with RCW 47.64.190(3), the commission shall review all negotiated agreements and arbitration orders, and may take written or oral testimony from the parties, regarding compliance with RCW 47.64.180. The commission shall determine, within fifteen days of receiving the secretary's request for review, by majority vote, whether or not the cumulative effect of all such agreements and orders exceeds the limitations of RCW 47.64.180.

[Statutory Authority: RCW 47.64.280, 90-06-047, § 316-55-700, filed 3/2/90, effective 4/2/90.]

WAC 316-55-710 Collective bargaining agreements stayed. Whenever the secretary of transportation requests commission review under RCW 47.64.190, the effect of all agreements and arbitration orders shall be stayed, pending the commission's final determination.

[Statutory Authority: RCW 47.64.280, 90-06-047, § 316-55-710, filed 3/2/90, effective 4/2/90.]

WAC 316-55-730 Commission action. If the commission determines that the budget and fare limitations imposed by RCW 47.64.180 would be exceeded if all agreements and arbitration orders were given full force and effect, the commission shall order the minimum percentage reduction in straight time wage provisions applied equally across the board to all agreements or arbitration orders which will result in compliance with RCW 47.64.180.

[Statutory Authority: RCW 47.64.280, 90-06-047, § 316-55-730, filed 3/2/90, effective 4/2/90.]

Chapter 316-65 WAC MARINE EMPLOYEES' GRIEVANCE ARBITRATION RULES

WAC

316-65-001	Scope—Contents—Other rules.
316-65-005	Grievance defined.
316-65-010	Grievance—Who may file.
316-65-020	Grievances—Arbitration request—Limitations.
316-65-030	Grievance arbitration—Filing—Service.
316-65-050	Grievance arbitration—Contents of request.
316-65-060	Amendment of grievance.
316-65-070	Grievance arbitration—Designation of arbitrator.
316-65-080	Grievance arbitration—Notice of hearing.
316-65-150	Grievance arbitration—Expenses.
316-65-510	Intervention and consolidation of grievances.
316-65-515	Conduct of grievance arbitration proceedings.
316-65-525	Grievance hearing waiver.
316-65-530	Order of proceedings and evidence.
316-65-535	Arbitration in the absence of a party.
316-65-538	Withdrawal of grievance.
316-65-540	Closing of hearing.
316-65-545	Grievance arbitration decision.
316-65-550	Petition for review of commissioner decision.
316-65-555	Commission action.
316-65-560	Grievance arbitration remedies.
316-65-600	Other law.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Chapter 316-85 WAC, which contains rules relating to surveys of compensation, benefits, and conditions of employment required by chapter 47.64 RCW.

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

WAC 316-65-005 Grievance defined. "Grievance" means a formal statement alleging injury, injustice, or violation of rights granted by rule, statute, collective bargaining agreement, or past practice: *Provided*, That any grievance involving alleged violations of rights protected by chapter 47.64 RCW may also be termed "unfair labor practices" and may also be filed and processed under chapter 316-45 WAC: *And Provided Further*, That because of the limitations on grievance arbitration decisions in RCW 47.64.150, requests for grievance arbitration and unfair labor practice complaints may not be consolidated for hearing and decision.

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

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

[Statutory Authority: RCW 47.64.280. 92-22-044, § 316-65-010, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-010, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-010, filed 3/20/84.]

WAC 316-65-020 Grievances—Arbitration request—Limitations. Unless another purpose is stated by the party filing a statement of grievance, it shall be construed as a request for grievance arbitration by the commission in accordance with RCW 47.64.150. The commission shall consider such a request for arbitration valid only after any applicable dispute remedies in the pertinent collective bargaining agreement have been exhausted, and within the time limits specified in such agreement. If the collective

bargaining agreement does not contain a remedial procedure for disputes, or upon showing good cause for not exhausting prearbitration remedies, a party may file the original request for arbitration directly with the commission. Unless otherwise specified in the agreement, a request for grievance arbitration must be filed not more than ninety days after the party filing such grievance knew or should have known of the alleged injury, injustice, or violation.

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

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

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

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

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

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

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

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

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

(6) The agreement of the requesting party, or the parties jointly, that the arbitrator's decision on the grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 316-65-150 Grievance arbitration—Expenses. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member, if any, of an

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

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

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

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

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

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

WAC 316-65-515 Conduct of grievance arbitration proceedings. (1) Prehearing conferences and hearings may be conducted by the commission or by a member of the commission assigned as arbitrator. At any time, an arbitrator may be substituted for the arbitrator previously presiding.

(2) The arbitrator shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises. All such arbitrators shall maintain compliance with the "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 processed under this chapter shall be filed in the public files of the

commission and shall not be accorded the privacy required by such code: *And provided further*, That if any statute or commission rule conflicts with aforesaid "code," the statute or rule shall prevail.

(3) The arbitrator shall have the authority:

(a) To administer oaths and affirmations;

(b) To issue subpoenas;

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

(d) To question witnesses;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 316-65-550 Petition for review of commissioner decision. The commissioner's proposed award shall be subject to review by the commission on its own motion, or on the petition of any party, made within twenty days following the date of the proposed award issued by the commissioner. The petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on each of the other parties to the proceeding. Such petition for review shall contain, in separate numbered paragraphs, statements of the specific orders or rulings on which the party filing the petition seeks review by the commission. A petition for review shall have attached to it any appeal brief or written argument which the party filing the petition for review desires to have considered by the commission. Other parties to the proceeding shall have ten days following the date on which they are served with a copy of such petition for review and accompanying brief or written argument to file a responsive brief or written argument. The commission may, for good cause, grant any party an extension of the time for filing of its brief or written argument. In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the commissioner's proposed order, the arbitration award of the arbitrator shall automatically become final and binding.

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

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

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

WAC 316-65-560 Grievance arbitration remedies. If upon the preponderance of evidence the arbitrator or commission shall conclude that any person named in the complaint has committed acts or is committing acts which have resulted in injury, injustice, or violation of rights granted by rule, statute or collective bargaining agreement, then the arbitrator or commission shall state its findings of fact and conclusions of law and cause to be served on such person a remedial order requiring him or her to cease and desist from such acts and to take such affirmative and corrective action as necessary to restore grievant's rights and to effectuate the policies of RCW 47.64.005 and 47.64.006, including but not limited to reinstatement of employees with or without back pay. In calculating back pay orders, the following shall apply:

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

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

(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment.

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

WAC 316-65-600 Other law. Nothing in chapter 316-65 WAC is intended to diminish the constitutional rights of any person or to limit or modify additional requirements imposed by statute, including the Administrative Procedure Act.

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

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—Settlement.
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.
316-75-310	Implementation.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

316-75-290	Commission action. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-290, filed 3/20/84.] Repealed by 90-01-120, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280 and 34.05.220.
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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 10-08 WAC, which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 316-75 WAC, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 316-75-050;

(b) WAC 10-08-211, which is supplanted by WAC 316-75-270; and

(c) WAC 10-08-230, which is supplanted by WAC 316-75-150.

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

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

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

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

(6) Chapter 316-65 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 and 34.05.220. 90-01-120, § 316-75-001, filed 12/20/89, effective 1/20/90. 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 and 34.05.220. 90-01-120, § 316-75-010, filed 12/20/89, effective 1/20/90. 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 47.64.160, 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 and 34.05.220. 90-01-120, § 316-75-030, filed 12/20/89, effective 1/20/90. 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 thirty 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, under chapter 316-35 WAC, or resolution of disputes concerning the interpretation or application of the collective bargaining agreement, under chapter 316-65 WAC.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-050, filed 12/20/89, effective 1/20/90. 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 and 34.05.220. 90-01-120, § 316-75-070, filed 12/20/89, effective 1/20/90. 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 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 department.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-090, filed 12/20/89, effective 1/20/90. 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(s)) under a collective bargaining agreement between Washington state department of transportation, marine division, and (name of exclusive bargaining representative)," and shall contain:

(1) The name and address of the marine division of the department and the name, address and telephone number of the person(s) designated by the department as its representative(s) for adjudicatory proceedings under chapter 47.64 RCW.

(2) The name, address and affiliation, if any, of petitioner's 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(s) and the name, address and telephone number of his/her/their 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 petitioner(s) and/or his/her/their representative(s).

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-110, filed 12/20/89, effective 1/20/90. 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 and 34.05.220. 90-01-120, § 316-75-130, filed 12/20/89, effective 1/20/90. 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—Settlement. The commission shall refer the petition under dispute to one of its members, who shall conduct an investigation and such prehearing conferences as may be necessary to determine the relative positions of the parties and the facts and authorities relied upon by them. He/she shall encourage the parties to reach agreement, expressed in stipulations binding on all parties. If the parties do not reach agreement, the commissioner shall issue a declaratory order which either grants or denies the petition, subject to commission review under WAC 316-02-230, or shall order a hearing under WAC 316-75-170.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-150, filed 12/20/89, effective 1/20/90. 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 if 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 the commission or a commissioner. Any such notice and hearing and further proceedings shall be in accordance with chapter 316-35 or 316-65 WAC and WAC 316-75-050, as the commission directs. Any such notice may be amended or withdrawn prior to the close of the hearing.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-170, filed 12/20/89, effective 1/20/90. 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 a member of the commission assigned 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 and 34.05.220. 90-01-120, § 316-75-190, filed 12/20/89, effective 1/20/90. 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 granted by WAC 316-35-150 or 316-65-515, whichever is applicable.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-210, filed 12/20/89, effective 1/20/90. 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 and 34.05.220. 90-01-120, § 316-75-230, filed 12/20/89, effective 1/20/90. 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 assigned commissioner may proceed forthwith upon the record, after submission of briefs or after further hearing, as may be appropriate, and shall issue and serve on the parties an order determining the matter, or shall refer the matter back to the commission. Thereupon he/she shall transfer the entire record in the proceeding to the commission.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-250, filed 12/20/89, effective 1/20/90. 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 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 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 assigned commissioner may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made 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 and 34.05.220. 90-01-120, § 316-75-270, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-270, 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 and 34.05.220. 90-01-120, § 316-75-310, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-310, filed 3/20/84.]

Chapter 316-85 WAC
SURVEYS—COMPENSATION—BENEFITS—
EMPLOYMENT

WAC

316-85-001	Scope—Contents—Other rules.
316-85-010	Policy—Purpose.
316-85-020	Fact-finding surveys—Content—Coverage.
316-85-030	Fact-finding surveys—Geographic limits.
316-85-040	Fact-finding surveys—Timing.
316-85-050	Washington state ferry system employee data required.
316-85-060	Fact-finding survey—Conduct.
316-85-070	Fact-finding preliminary findings—Hearings.
316-85-080	Fact-finding survey—Final report.
316-85-090	Additional fact finding.
316-85-100	Fact-finding reports—Public documents.

WAC 316-85-001 Scope—Contents—Other rules.

This chapter governs proceedings before the marine employees' commission relating to fact-finding surveys of compensation, benefits, and conditions of employment. This chapter does not contemplate, and does not provide procedures for, investigation and/or settlement of contested cases between parties. Therefore, hearings held in reaching conclusions in the fact-finding required by RCW 47.64.220 are not deemed to be adjudicatory in nature and not governed by RCW 34.05.425 or 34.12.020 or chapter 10-08 WAC. However, insofar as additional fact-finding may be requested by parties involved in dispute or impasse in accordance with RCW 47.64.220, 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 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system;

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

(4) 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. 90-06-046, § 316-85-001, filed 3/2/90, effective 4/2/90.]

WAC 316-85-010 Policy—Purpose. Prior to collective bargaining between the Washington state ferry system and the ferry employee organizations, the commission shall conduct certain fact-finding surveys as hereinafter described. Such surveys shall be used to guide generally but not to define or limit collective bargaining between the parties.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-010, filed 3/2/90, effective 4/2/90.]

WAC 316-85-020 Fact-finding surveys—Content—Coverage. In conducting its prebargaining survey, and publishing the findings, the commission shall make comparisons of wages, hours, employee benefits, and conditions of employment of Washington state ferry employees with those of public and private sector employees doing directly comparable but not necessarily identical work. In making its

comparisons between and among employers, the commission shall recognize the principle that the greater the degree of comparability between work requirements and conditions of employment, the greater will be the validity of comparisons of wages and employee benefits. The commission shall give consideration to factors peculiar to the area and the classifications involved.

In determining the scope of the survey and in selecting the ferry systems or other employers to be included in the survey, the commission shall consider the size, tonnage, and horsepower of the vessels operated by the Washington state ferry system and by the employers to be included in the survey. The commission shall not include those classifications of employees exempted pursuant to RCW 41.06.079.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-020, filed 3/2/90, effective 4/2/90.]

WAC 316-85-030 Fact-finding surveys—Geographic limits. The commission shall limit its prebargaining fact-finding surveys to ferry systems and other employers located in states along the west coast, including Alaska, and in British Columbia.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-030, filed 3/2/90, effective 4/2/90.]

WAC 316-85-040 Fact-finding surveys—Timing.

(1) No later than September 10 of each even-numbered year the commission shall notify the department of transportation and the ferry employee organizations that the commission is starting a fact-finding survey required by RCW 47.64.220.

(2) No later than the following October 1, the department and the ferry employee organizations shall each inform the commission of any particular personnel positions or classifications which may be expected to receive extraordinary attention during the next renewal of agreements.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-040, filed 3/2/90, effective 4/2/90.]

WAC 316-85-050 Washington state ferry system employee data required. In order to assure maximum effectiveness and minimal error in its fact-finding surveys, no later than October 1 of each even-numbered year, the department shall also provide the commission with the following data:

(1) A complete and current set of specifications for each position classification occupied by ferry employees except those exempted pursuant to RCW 41.06.079. Each classification specification shall include as a minimum:

- (a) Classification title;
- (b) General definition;
- (c) Typical duties and responsibilities;
- (d) Special or extraordinary but recurring conditions of employment, if any;
- (e) Direction/supervision received;
- (i) Degree of closeness and frequency;
- (ii) Source of direction/supervision;
- (f) Direction/supervision exercised;
- (i) Over which classifications;
- (ii) Number(s) of personnel;
- (g) Minimum requirements for initial appointment;
- (i) Licensure or certificate;

- (ii) Education;
- (iii) Work experience;
- (h) Additional desirable qualifications, knowledge abilities;
- (2) Wages/salaries currently paid to personnel described in foregoing specifications for regular hours worked;
- (3) Current premium pay;
 - (a) Overtime;
 - (b) Other irregular hours;
 - (c) Hazards;
- (4) Employee benefits currently paid or furnished by the department and, where appropriate, the proportion paid by the employee by payroll deduction or by reduction of compensation pursuant to RCW 47.64.270.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-050, filed 3/2/90, effective 4/2/90.]

WAC 316-85-060 Fact-finding survey—Conduct.

(1) After receiving the information required in WAC 316-85-040(2) and 316-85-050, the commission shall make inquiry of other ferry systems and other employers by mail or in person, conduct such field audits or desk audits as deemed necessary for valid comparisons, and analyze salary and benefit data thus accumulated.

(2) In conducting its survey and in analyzing its data, the commission shall consider factors peculiar to the areas from which the data were accumulated pursuant to RCW 47.64.220 and 47.64.240 (9)(b) and WAC 316-85-020, including but not limited to:

- (a) Comparison of rates of monetary exchange;
- (b) Differential costs of living in each area compared with the Seattle cost of living index, and employer compensation therefor, if any;
- (c) The cost effect of universal health care coverage provided by British Columbia or a state, if any, as compared with the fee for service and/or health maintenance organization health care coverage provided by the state of Washington.

(3) The commission shall not include in its survey any employer who is involved in a strike or lockout or whose wage-benefit package is indeterminate for any other known reason.

(4) No later than December 15 the commission shall compile a preliminary draft of findings regarding wages, employee benefits, and other compensation being paid to other employees as compared with wages, employee benefits, and other compensation being paid by the Washington state ferry system. The preliminary draft of findings shall be distributed to the department and to the ferry employee organizations.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-060, filed 3/2/90, effective 4/2/90.]

WAC 316-85-070 Fact-finding preliminary findings—Hearings. (1) No later than January 10 of each odd-numbered year, the commission shall conduct a public review of its preliminary findings, after soliciting comments and suggestions for improvement of validity of said preliminary survey findings from the department and from the ferry employee organizations.

(2) The commission shall immediately thereafter investigate and/or reanalyze all comments and questions raised by the department or ferry employee organizations. If necessary to resolve doubts raised about validity, the commission shall perform such additional field or desk audits as may be necessary and feasible.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-070, filed 3/2/90, effective 4/2/90.]

WAC 316-85-080 Fact-finding survey—Final report. No later than March 1 of each odd-numbered year, the commission shall publish and distribute to all parties its final prebargaining fact-finding survey report.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-080, filed 3/2/90, effective 4/2/90.]

WAC 316-85-090 Additional fact finding. In addition to the prebargaining surveys described in this chapter, the commission shall make such other findings of fact as the parties may request during bargaining or impasse.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-090, filed 3/2/90, effective 4/2/90.]

WAC 316-85-100 Fact-finding reports—Public documents. All fact-finding reports issued by the commission shall be in writing and shall be public documents.

[Statutory Authority: RCW 47.64.280. 90-06-046, § 316-85-100, filed 3/2/90, effective 4/2/90.]