

# Title 391 WAC

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

**Chapters**

- 391-08**      **Rules of practice and procedure—Public employment relations commission.**
- 391-25**      **Representation case rules.**
- 391-35**      **Unit clarification case rules.**
- 391-45**      **Unfair labor practice case rules.**
- 391-55**      **Impasse resolution rules.**
- 391-65**      **Grievance arbitration rules.**
- 391-95**      **Union security dispute rules.**

**DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE**

**Chapter 391-21  
COLLECTIVE BARGAINING RULES—  
PUBLIC EMPLOYMENT**

391-21-001	Scope—Contents—Other rules. [Order 77-8, § 391-21-001, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-115	Consent cross-checks. [Order 77-8, § 391-21-115, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-003	Application to port districts. [Statutory Authority: RCW 41.58.050 and 53.18.030. 79-03-015 (Order 79-1), § 391-21-003, filed 2/16/79.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-116	Notice of hearing. [Order 77-8, § 391-21-116, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-100	Petition for investigation of a question concerning representation of employees—Who may file. [Order 77-8, § 391-21-100, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-118	Hearings—Who shall conduct. [Order 77-8, § 391-21-118, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-102	Petition form—Number of copies—Filing—Service. [Order 77-8, § 391-21-102, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-120	Authority of hearing officer. [Order 77-8, § 391-21-120, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-104	Contents of petition. [Order 77-8, § 391-21-104, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-122	Hearings—Nature and scope. [Order 77-8, § 391-21-122, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-105	Contents of petition filed by employer. [Order 77-8, § 391-21-105, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-124	Proceedings before the executive director. [Order 77-8, § 391-21-124, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-106	Supporting evidence. [Order 77-8, § 391-21-106, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-125	Cross-check of records. [Order 77-8, § 391-21-125, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-107	List of employees. [Order 77-8, § 391-21-107, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-126	Notice of election. [Order 77-8, § 391-21-126, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-108	Amendment and withdrawal. [Order 77-8, § 391-21-108, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-128	Election procedures—Disclaimers—Balloting. [Order 77-8, § 391-21-128, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-110	Intervention—By incumbent representative. [Order 77-8, § 391-21-110, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-130	Challenged ballots. [Order 77-8, § 391-21-130, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-112	Intervention—By organization other than incumbent. [Order 77-8, § 391-21-112, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-132	Tally of ballots. [Order 77-8, § 391-21-132, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-113	Showing of interest confidential. [Order 77-8, § 391-21-113, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-134	Procedure following inconclusive election. [Order 77-8, § 391-21-134, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-114	Consent elections. [Order 77-8, § 391-21-114, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-136	Filing and service of objections. [Order 77-8, § 391-21-136, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-21-137	Filing and service of cross-objections. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. 78-07-014 (Order 78-3), § 391-21-137, filed 6/15/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-21-138	Procedure where no objections are filed. [Order 77-8, § 391-21-138, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-21-140	Procedure where objections are filed. [Order 77-8, § 391-21-140, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-21-142	Commission action. [Order 77-8, § 391-21-142, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-21-300	Petition for clarification of an existing bargaining unit—Who may file. [Order 77-8, § 391-21-300, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.

391-21-302	Petition form—Number of copies—Filing—Service. [Order 77-8, § 391-21-302, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-518	Answer—Filing and service. [Order 77-8, § 391-21-518, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-304	Contents of petition. [Order 77-8, § 391-21-304, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-520	Answer—Contents and effect of failure to answer. [Order 77-8, § 391-21-520, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-306	Amendment and withdrawal. [Order 77-8, § 391-21-306, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-522	Amendment of answer. [Order 77-8, § 391-21-522, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-308	Notice of hearing. [Order 77-8, § 391-21-308, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-524	Motion to make complaint more definite and certain. [Order 77-8, § 391-21-524, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-310	Consolidation of proceedings. [Order 77-8, § 391-21-310, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-526	Hearings—Nature and scope. [Order 77-8, § 391-21-526, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-312	Hearings—Who shall conduct. [Order 77-8, § 391-21-312, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-528	Briefs and proposed findings. [Order 77-8, § 391-21-528, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-314	Authority of hearing officer. [Order 77-8, § 391-21-314, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-530	Examiner decision. [Order 77-8, § 391-21-530, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-316	Hearings—Nature and scope. [Order 77-8, § 391-21-316, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-532	Withdrawal or modification of examiner decision. [Order 77-8, § 391-21-532, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-318	Proceedings before the executive director. [Order 77-8, § 391-21-318, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-534	Petition for review of examiner decision. [Order 77-8, § 391-21-534, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-320	Proceedings before the commission—Petition for review. [Order 77-8, § 391-21-320, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-535	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. 78-07-014 (Order 78-3), § 391-21-535, filed 6/15/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-321	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. 78-07-014 (Order 78-3), § 391-21-321, filed 6/15/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-536	Commission action. [Order 77-8, § 391-21-536, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-322	Commission action. [Order 77-8, § 391-21-322, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-550	Collective bargaining—Policy. [Order 77-8, § 391-21-550, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-500	Complaint charging unfair labor practices—Who may file. [Order 77-8, § 391-21-500, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-556	Unfair labor practice remedies. [Order 77-8, § 391-21-556, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-502	Form of charges—Number of copies—Filing—Service. [Order 77-8, § 391-21-502, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-700	Resolution of impasses—Request for mediation. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-700, filed 3/28/80; Order 77-8, § 391-21-700, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-504	Contents of complaint charging unfair labor practices. [Order 77-8, § 391-21-504, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-702	Impasse resolution—Determination whether assistance is needed. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-702, filed 3/28/80; Order 77-8, § 391-21-702, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-506	Amendment. [Order 77-8, § 391-21-506, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-706	Impasse resolution—Function of mediator. [Order 77-8, § 391-21-706, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-508	Withdrawal. [Order 77-8, § 391-21-508, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-708	Impasse resolution—Confidential nature of function. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-708, filed 3/28/80; Order 77-8, § 391-21-708, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-510	Initial processing by executive director. [Order 77-8, § 391-21-510, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-712	Impasse resolution—Dispute resolution panel. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-712, filed 3/28/80; Order 77-8, § 391-21-712, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-512	Examiner—Who may act. [Order 77-8, § 391-21-512, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-716	Impasse resolution—Disclosure. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-
391-21-514	Authority of examiner. [Order 77-8, § 391-21-514, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		
391-21-516	Notice of hearing. [Order 77-8, § 391-21-516, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		

- 2), § 391-21-716, filed 3/28/80; Order 77-8, § 391-21-716, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-718 Impasse resolution—Vacancies. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-718, filed 3/28/80; Order 77-8, § 391-21-718, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-719 Uniformed personnel—Interest arbitration. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-719, filed 3/28/80.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-720 Uniformed personnel—Appointment of partisan arbitrators. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-720, filed 3/28/80; Order 77-8, § 391-21-720, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-721 Uniformed personnel—Selection of impartial arbitrator. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-721, filed 3/28/80.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-722 Uniformed personnel—List of issues for arbitration. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-722, filed 3/28/80; Order 77-8, § 391-21-722, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-723 Uniformed personnel—Hearing. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-723, filed 3/28/80.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-724 Uniformed personnel—Order of proceedings and evidence. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-724, filed 3/28/80; Order 77-8, § 391-21-724, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-726 Uniformed personnel—Proceedings in the absence of a party. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-726, filed 3/28/80; Order 77-8, § 391-21-726, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-728 Uniformed personnel—Closing of the hearings. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-728, filed 3/28/80; Order 77-8, § 391-21-728, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-733 Uniformed personnel—Conduct of interest arbitration proceedings. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-733, filed 3/28/80.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-734 Uniformed personnel—Interpretation and application of rules. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-734, filed 3/28/80; Order 77-8, § 391-21-734, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-735 Uniformed personnel—Interest arbitration award. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-735, filed 3/28/80.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-737 Uniformed personnel—Expenses of arbitration. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-737, filed 3/28/80.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-738 Uniformed personnel—Central filing of agreements. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-738, filed 3/28/80; Order 77-8, § 391-21-738, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-740 Uniformed personnel—Initiation of fact finding. [Order 77-8, § 391-21-740, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-742 Uniformed personnel—Selection of fact finder. [Order 77-8, § 391-21-742, filed 12/29/77, effective 2/1/78.] Repealed by RCW 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-744 Uniformed personnel—Fact finding recommendations. [Order 77-8, § 391-21-744, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-746 Uniformed personnel—Expenses of fact finding. [Order 77-8, § 391-21-746, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-748 Uniformed personnel—Parties' responsibility after fact finding. [Order 77-8, § 391-21-748, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-750 Uniformed personnel—Interest arbitration. [Order 77-8, § 391-21-750, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-752 Uniformed personnel—Appointment of partisan arbitrators. [Order 77-8, § 391-21-752, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-754 Uniformed personnel—Selection of arbitrators. [Order 77-8, § 391-21-754, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-756 Uniformed personnel—Conduct of interest arbitration proceedings. [Order 77-8, § 391-21-756, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-758 Impasse arbitration—Interest arbitration award. [Order 77-8, § 391-21-758, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-760 Uniformed personnel—Expenses of arbitration. [Order 77-8, § 391-21-760, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-800 Grievance arbitration—Who may file. [Order 77-8, § 391-21-800, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-802 Grievance arbitration—Filing—Service. [Order 77-8, § 391-21-802, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-804 Grievance arbitration—Contents of request. [Order 77-8, § 391-21-804, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-806 Grievance arbitration—Appointment of staff arbitrator. [Order 77-8, § 391-21-806, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-808 Grievance arbitration—Submission of arbitration panel. [Order 77-8, § 391-21-808, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-810 Grievance arbitration—Conduct of proceedings. [Order 77-8, § 391-21-810, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-812 Grievance arbitration—Award. [Order 77-8, § 391-21-812, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-814 Grievance arbitration—Expenses. [Order 77-8, § 391-21-814, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.

- 391-21-900 Union security provisions. [Order 77-8, § 391-21-900, filed 12/29/77, effective 2/1/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- Chapter 391-30**  
**COLLECTIVE BARGAINING RULES—**  
**EDUCATIONAL EMPLOYMENT**
- 391-30-001 Scope—Contents—Other rules. [Order 77-6, § 391-30-001, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-100 Petition for investigation of a question concerning representation of employees—Who may file. [Order 77-6, § 391-30-100, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-102 Petition form—Number of copies—Filing—Service. [Order 77-6, § 391-30-102, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-104 Contents of petition. [Order 77-6, § 391-30-104, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-106 Supporting evidence. [Order 77-6, § 391-30-106, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-108 Amendment and withdrawal. [Order 77-6, § 391-30-108, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-110 Intervention—By incumbent representative. [Order 77-6, § 391-30-110, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-112 Intervention—By organization other than incumbent. [Order 77-6, § 391-30-112, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-113 Showing of interest confidential. [Order 77-6, § 391-30-113, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-114 Consent elections. [Order 77-6, § 391-30-114, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-116 Notice of hearing. [Order 77-6, § 391-30-116, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-118 Hearings—Who shall conduct. [Order 77-6, § 391-30-118, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-120 Authority of hearing officer. [Order 77-6, § 391-30-120, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-122 Hearings—Nature and scope. [Order 77-6, § 391-30-122, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-124 Proceedings before the executive director. [Order 77-6, § 391-30-124, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-126 Notice of election. [Order 77-6, § 391-30-126, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-128 Election procedures—Disclaimers—Balloting. [Order 77-6, § 391-30-128, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-130 Challenged ballots. [Order 77-6, § 391-30-130, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-132 Tally of ballots. [Order 77-6, § 391-30-132, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-134 Procedure following inconclusive election. [Order 77-6, § 391-30-134, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-136 Filing and service of objections to election. [Order 77-6, § 391-30-136, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-137 Filing and service of cross-objections. [Statutory Authority: RCW 41.58.050 and 41.59.110. 78-07-013 (Order 78-4), § 391-30-137, filed 6/15/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-138 Procedure where no objections are filed. [Order 77-6, § 391-30-138, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-140 Procedure where objections to election are filed. [Order 77-6, § 391-30-140, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-142 Commission action. [Order 77-6, § 391-30-142, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-300 Petition for clarification of an existing bargaining unit—Who may file. [Order 77-6, § 391-30-300, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-302 Petition form—Number of copies—Filing—Service. [Order 77-6, § 391-30-302, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-304 Contents of petition. [Order 77-6, § 391-30-304, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-306 Amendment and withdrawal. [Order 77-6, § 391-30-306, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-308 Notice of hearing. [Order 77-6, § 391-30-308, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-310 Consolidation of proceedings. [Order 77-6, § 391-30-310, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-312 Hearings—Who shall conduct. [Order 77-6, § 391-30-312, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-314 Authority of hearing officer. [Order 77-6, § 391-30-314, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-316 Hearings—Nature and scope. [Order 77-6, § 391-30-316, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-318 Proceedings before the executive director. [Order 77-6, § 391-30-318, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-320 Proceedings before the commission—Petition for review. [Order 77-6, § 391-30-320, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-321 Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050 and 41.59.110. 78-07-013 (Order 78-4), § 391-30-321, filed 6/15/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-322 Commission action. [Order 77-6, § 391-30-322, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-500 Complaint charging unfair labor practices—Who may file. [Order 77-6, § 391-30-500, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-502 Complaint form—Number of copies—Filing—Service. [Order 77-6, § 391-30-502, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-504 Contents of complaint charging unfair labor practices. [Order 77-6, § 391-30-504, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-506 Amendment. [Order 77-6, § 391-30-506, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-508 Withdrawal. [Order 77-6, § 391-30-508, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-510 Initial processing by executive director. [Order 77-6, § 391-30-510, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-512 Examiner—Who may act. [Order 77-6, § 391-30-512, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.

- 391-30-514 Authority of examiner. [Order 77-6, § 391-30-514, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-516 Notice of hearing. [Order 77-6, § 391-30-516, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-518 Answer—Filing and service. [Order 77-6, § 391-30-518, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-520 Answer—Contents and effect of failure to answer. [Order 77-6, § 391-30-520, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-522 Amendment of answer. [Order 77-6, § 391-30-522, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-524 Motion to make complaint more definite and certain. [Order 77-6, § 391-30-524, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-526 Hearings—Nature and scope. [Order 77-6, § 391-30-526, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-528 Briefs and proposed findings. [Order 77-6, § 391-30-528, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-530 Examiner decision. [Order 77-6, § 391-30-530, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-532 Withdrawal or modification of examiner decision. [Order 77-6, § 391-30-532, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-534 Petition for review of examiner decision. [Order 77-6, § 391-30-534, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-535 Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050 and 41.59.110. 78-07-013 (Order 78-4), § 391-30-535, filed 6/15/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-536 Commission action. [Order 77-6, § 391-30-536, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-550 Collective bargaining—Policy. [Order 77-6, § 391-30-550, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-552 Collective bargaining procedure. [Order 77-6, § 391-30-552, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-554 Determination of disputes as to scope of bargaining. [Order 77-6, § 391-30-554, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-556 Unfair labor practice remedies. [Order 77-6, § 391-30-556, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-560 Motion for temporary relief. [Order 77-6, § 391-30-560, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-700 Resolution of impasses—Request for mediation. [Order 77-6, § 391-30-700, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-702 Impasse resolution—Determination whether assistance is needed. [Order 77-6, § 391-30-702, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-704 Impasse resolution—Submission of written proposals. [Order 77-6, § 391-30-704, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-706 Impasse resolution—Function of mediator. [Order 77-6, § 391-30-706, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-708 Impasse resolution—Confidential nature of function. [Order 77-6, § 391-30-708, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-710 Impasse resolution—Fact finding. [Order 77-6, § 391-30-710, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-712 Impasse resolution—Fact finding panel. [Order 77-6, § 391-30-712, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-714 Impasse resolution—Selection of fact finder. [Order 77-6, § 391-30-714, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-716 Impasse resolution—Disclosure by fact finder. [Order 77-6, § 391-30-716, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-718 Impasse resolution—Vacancies as fact finder. [Order 77-6, § 391-30-718, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-720 Impasse resolution—List of issues for fact finding. [Order 77-6, § 391-30-720, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-722 Impasse resolution—Fact finding hearing. [Order 77-6, § 391-30-722, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-724 Impasse resolution—Order of fact finding proceedings and evidence. [Order 77-6, § 391-30-724, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-726 Impasse resolution—Fact finding in the absence of a party. [Order 77-6, § 391-30-726, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-728 Impasse resolution—Closing of fact finding hearings. [Order 77-6, § 391-30-728, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-730 Impasse resolution—Findings of fact and recommendations. [Order 77-6, § 391-30-730, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-732 Impasse resolution—Expenses of fact finding. [Order 77-6, § 391-30-732, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-734 Impasse resolution—Interpretation and application of fact finding rules. [Order 77-6, § 391-30-734, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-736 Impasse resolution—Parties' responsibility after fact finding. [Order 77-6, § 391-30-736, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-738 Impasse resolution—Central filing of agreements. [Order 77-6, § 391-30-738, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.
- 391-30-900 Union security provisions. [Order 77-6, § 391-30-900, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: 41.58.050.

**Chapter 391-50  
COLLECTIVE BARGAINING RULES—  
COMMUNITY COLLEGES**

- 391-50-001 Scope—Contents—Other rules. [Order 77-6, § 391-50-001, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-100 Petition for investigation of question concerning representation of employees—Who may file—Timeliness. [Order 77-6, § 391-50-100, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-102 Petition form—Number of copies—Filing—Service. [Order 77-6, § 391-50-102, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-104 Contents of petition. [Order 77-6, § 391-50-104, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-105 Contents of petition filed by employer. [Order 77-6, § 391-50-105, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.

- 391-50-106 Supporting evidence. [Order 77-6, § 391-50-106, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-108 Amendment and withdrawal. [Order 77-6, § 391-50-108, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-110 Intervention—By incumbent representative. [Order 77-6, § 391-50-110, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-112 Intervention—By organization other than incumbent. [Order 77-6, § 391-50-112, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-113 Showing of interest confidential. [Order 77-6, § 391-50-113, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-114 Consent elections. [Order 77-6, § 391-50-114, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-116 Notice of hearing. [Order 77-6, § 391-50-116, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-118 Hearings—Who shall conduct. [Order 77-6, § 391-50-118, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-120 Authority of hearing officer. [Order 77-6, § 391-50-120, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-122 Hearings—Nature and scope. [Order 77-6, § 391-50-122, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-124 Proceedings before the executive director. [Order 77-6, § 391-50-124, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-126 Notice of election. [Order 77-6, § 391-50-126, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-128 Election procedures—Disclaimers—Balloting. [Order 77-6, § 391-50-128, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-130 Challenged ballots. [Order 77-6, § 391-50-130, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-132 Tally of ballots. [Order 77-6, § 391-50-132, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-134 Procedure following inconclusive election. [Order 77-6, § 391-50-134, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-136 Filing and service of objections to election. [Order 77-6, § 391-50-136, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-137 Filing and service of cross-objections. [Statutory Authority: RCW 28B.52.080 and 41.58.050. 78-07-012 (Order 78-5), § 391-50-137, filed 6/15/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-138 Procedure where no objections are filed. [Order 77-6, § 391-50-138, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-140 Procedure where objections to election are filed. [Order 77-6, § 391-50-140, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-142 Commission action. [Order 77-6, § 391-50-142, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-300 Petition for clarification of an existing bargaining unit—Who may file. [Order 77-6, § 391-50-300, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-302 Petition form—Number of copies—Filing—Service. [Order 77-6, § 391-50-302, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-304 Contents of petition. [Order 77-6, § 391-50-304, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-306 Amendment and withdrawal. [Order 77-6, § 391-50-306, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-308 Notice of hearing. [Order 77-6, § 391-50-308, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-310 Consolidation of proceedings. [Order 77-6, § 391-50-310, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-312 Hearings—Who shall conduct. [Order 77-6, § 391-50-312, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-314 Authority of hearing officer. [Order 77-6, § 391-50-314, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-316 Hearings—Nature and scope. [Order 77-6, § 391-50-316, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-318 Proceedings before the executive director. [Order 77-6, § 391-50-318, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-320 Proceedings before the commission—Petition for review. [Order 77-6, § 391-50-320, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-321 Filing and service of cross-petition for review. [Statutory Authority: RCW 28B.52.080 and 41.58.050. 78-07-012 (Order 78-5), § 391-50-321, filed 6/15/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-322 Commission action. [Order 77-6, § 391-50-322, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-700 Resolution of impasses—Request for mediation. [Order 77-6, § 391-50-700, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-702 Impasse resolution—Determination whether assistance is needed. [Order 77-6, § 391-50-702, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-706 Impasse resolution—Function of mediator. [Order 77-6, § 391-50-706, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-708 Impasse resolution—Confidential nature of function. [Order 77-6, § 391-50-708, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-710 Impasse resolution—Fact finding. [Order 77-6, § 391-50-710, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-712 Impasse resolution—Fact finding panel. [Order 77-6, § 391-50-712, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-714 Impasse resolution—Selection of fact finder. [Order 77-6, § 391-50-714, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-716 Impasse resolution—Disclosure by fact finder. [Order 77-6, § 391-50-716, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-718 Impasse resolution—Vacancies as fact finder. [Order 77-6, § 391-50-718, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-720 Impasse resolution—List of issues for fact finding. [Order 77-6, § 391-50-720, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.

- 391-50-722 Impasse resolution—Fact finding hearing. [Order 77-6, § 391-50-722, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-724 Impasse resolution—Order of fact finding proceedings and evidence. [Order 77-6, § 391-50-724, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-728 Impasse resolution—Closing of fact finding hearings. [Order 77-6, § 391-50-728, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-730 Impasse resolution—Findings of fact and recommendations. [Order 77-6, § 391-50-730, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-732 Impasse resolution—Expenses of fact findings. [Order 77-6, § 391-50-732, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-50-734 Impasse resolution—Interpretation and application of fact finding rules. [Order 77-6, § 391-50-734, filed 11/9/77.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-170 Hearings. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-170, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-220 Order of procedure. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-220, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-245 Inspection of conditions. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-245, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-260 Briefs. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-260, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-300 Compliance with orders—Notification to commission. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-300, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.

**Chapter 391-70****COLLECTIVE BARGAINING RULES—  
MARINE EMPLOYEES**

- 391-70-010 Scope—Contents—Other rules. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-010, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-020 Special rules. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-020, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-030 Modifications and exceptions. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-030, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-040 Address for communications. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-040, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-050 Office hours. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-050, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-070 Definitions. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-070, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-080 Informal procedure. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-080, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-090 Formal procedure. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-090, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-105 Formal notices—Number of copies—Filing—Service. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-105, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-110 Intervention. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-110, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-120 Appearances. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-120, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-70-140 Voluntary settlement. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-140, filed 12/14/78.] Repealed by 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

**Chapter 391-08 WAC****RULES OF PRACTICE AND PROCEDURE—PUBLIC  
EMPLOYMENT RELATIONS COMMISSION****WAC**

- 391-08-001 Application and scope of chapter 391-08 WAC.
- 391-08-003 Policy—Construction—Waiver.
- 391-08-007 Definitions.
- 391-08-010 Appearance and practice before agency—Who may appear—Notice of appearance.
- 391-08-020 Appearance and practice before agency—Standards of conduct.
- 391-08-030 Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff.
- 391-08-040 Appearance and practice before agency—Former employee as witness.
- 391-08-100 Computation of time.
- 391-08-120 Filing and service of papers.
- 391-08-180 Continuances.
- 391-08-300 Subpoenas—Discovery.
- 391-08-310 Subpoenas—Form—Issuance to parties.
- 391-08-315 Interpreters.
- 391-08-520 Declaratory orders.
- 391-08-610 Agency decisions—Service.
- 391-08-630 Agency structure—Substitution for executive director.
- 391-08-640 Adjudicative proceedings—Appeals.
- 391-08-650 Case docketing and numbering.
- 391-08-670 Decision numbering—Citation of cases—Indexing of decisions.
- 391-08-800 Agency records—Public access.
- 391-08-810 Agency records—Confidentiality.
- 391-08-820 Agency offices.

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

- 391-08-103 Service of process—Additional time after service by mail. [Order 77-1, § 391-08-103, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-105 Service of process—Extension of time. [Order 77-1, § 391-08-105, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-110 Service of process—By whom served. [Order 77-1, § 391-08-110, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and

- chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-130 Service of process—Method of service. [Order 77-1, § 391-08-130, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-140 Service of process—Completion of service on parties. [Order 77-1, § 391-08-140, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-150 Service of process—Filing with agency. [Order 77-1, § 391-08-150, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-160 Service of process—Opportunity for hearing. [Order 77-1, § 391-08-160, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.
- 391-08-170 Service of process—Notice of hearing. [Order 77-1, § 391-08-170, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-200 Definition of issues—Before hearing. [Order 77-1, § 391-08-200, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-210 Definition of issues—Prehearing conference. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-210, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-210, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.
- 391-08-220 Definition of issues—Record of action taken during prehearing conference. [Order 77-1, § 391-08-220, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-230 Summary judgment. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 98-14-112, § 391-08-230, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. 90-06-070, § 391-08-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040, 81-02-034 (Order 81-01), § 391-08-230, filed 1/6/81.] Repealed by 00-14-048, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050.
- 391-08-320 Subpoenas—Service. [Order 77-1, § 391-08-320, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-330 Subpoenas—Fees. [Order 77-1, § 391-08-330, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-340 Subpoenas—Proof of service. [Order 77-1, § 391-08-340, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-350 Subpoenas—Quashing. [Order 77-1, § 391-08-350, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-360 Subpoenas—Enforcement. [Order 77-1, § 391-08-360, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-370 Subpoenas—Geographical scope. [Order 77-1, § 391-08-370, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-400 Evidence—Examination of witnesses. [Order 77-1, § 391-08-400, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-410 Evidence—Application of rules of evidence. [Order 77-1, § 391-08-410, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-420 Evidence—Objections and rulings. [Order 77-1, § 391-08-420, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-450 Evidence—Stipulations and admissions of record. [Order 77-1, § 391-08-450, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-460 Evidence—Submission of documentary evidence. [Order 77-1, § 391-08-460, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-470 Evidence—Excerpts from documentary evidence. [Order 77-1, § 391-08-470, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-490 Evidence—Refusal of witness to answer. [Order 77-1, § 391-08-490, filed 1/27/77.] Repealed by 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-500 Declaratory rulings authorized. [Order 77-1, § 391-08-500, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-510 Declaratory rulings—Petition. [Order 77-1, § 391-08-510, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-600 Agency decisions—Form and content. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-600, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-600, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 35.05.461 [34.05.461], 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.
- 391-08-900 Petitions for rule making—Who may petition. [Order 77-1, § 391-08-900, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-910 Petitions for rule making—Form. [Order 77-1, § 391-08-910, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-920 Petitions for rule making—Agency must consider. [Order 77-1, § 391-08-920, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

391-08-930 Petitions for rule making—Notice of disposition. [Order 77-1, § 391-08-930, filed 1/27/77.] Repealed by 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, 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.

**WAC 391-08-001 Application and scope of chapter 391-08 WAC.** Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); and sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively), to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and

(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

#### **WAC 391-08-003 Policy—Construction—Waiver.**

The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the agency, and nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to adjust any labor dispute. The commission and its authorized agents may waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.58.005(1). 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

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

(1) "Agency" means the public employment relations commission, its officers and agents;

(2) "Commission" means the public employment relations commission;

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

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(5) "Presiding officer" means an agency official(s), examiner, hearing officer or other person authorized to act on behalf of the agency.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-007, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-007, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-045 (Order 80-4), § 391-08-007, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-007, filed 1/27/77.]

**WAC 391-08-010 Appearance and practice before agency—Who may appear—Notice of appearance.** (1) No person may appear in a representative capacity before the agency other than the following:

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

(b) 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;

(c) A bona fide officer, employee or other authorized representative of: (i) Any employer subject to the jurisdiction of the agency, or (ii) any labor or employee organization.

(2) Except where the information is already listed in the agency's docket records for the particular case, a person appearing in a representative capacity shall file and serve a notice of appearance listing the representative's name, address, telephone number, fax number, and e-mail address.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 00-14-048, § 391-08-010, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-010, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-010, filed 1/27/77.]

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

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-020, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-020, filed 1/27/77.]

**WAC 391-08-030 Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff.** No former member of the commission, former employee of the agency or former member of the attorney general's staff assigned to represent the agency shall, at any time after severing his or her employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his or her employment with the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 96-07-105, § 391-08-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-030, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-030, filed 1/27/77.]

**WAC 391-08-040 Appearance and practice before agency—Former employee as witness.** Except upon the express written consent of the commission, no former mem-

ber of the commission, former employee of the agency or former member of the attorney general's staff assigned to represent the agency shall, at any time after severing his or her employment with the agency or with the attorney general, appear as a witness on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his or her employment with the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 96-07-105, § 391-08-040, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-040, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-040, filed 1/27/77.]

**WAC 391-08-100 Computation of time.** In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is 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 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 98-14-112, § 391-08-100, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-100, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-100, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-100, filed 1/27/77.]

### **WAC 391-08-120 Filing and service of papers.**

#### **FILING OF PAPERS WITH THE AGENCY**

(1) Papers to be filed with the agency shall be filed at the commission's Olympia office. The executive director shall post, and from time to time revise as appropriate, a list containing the street and mailing addresses for filing by actual delivery of papers, the telephone number for filing by electronic telefacsimile transmission (fax), and the electronic mail (e-mail) address and software supported by the agency for filing by e-mail attachment.

(2) Papers may be filed by any of the following methods:

(a) FILING BY ACTUAL DELIVERY of papers to the agency (including filings delivered by United States mail) shall be subject to the following limitations:

(i) Only the original paper(s) shall be filed. No additional copies of papers are required.

(ii) The case number(s) shall be indicated on the front page of each document filed, except for petitions and complaints being filed to initiate proceedings before the agency.

(iii) Filing shall occur only upon actual receipt of the original paper by the agency during office hours.

(iv) Papers delivered to or left at the agency office after the close of business will be deemed to be filed on the next business day the office is open.

(b) FILING BY FAX shall be subject to the following limitations:

(i) Parties shall only transmit one copy of the paper, accompanied by a cover sheet or form identifying the party filing the paper, the total number of pages in the fax transmission, and the name, address, telephone number and fax number of the person sending the fax.

(ii) The original paper filed by fax shall be mailed to the commission's Olympia office on the same day the fax is transmitted.

(iii) The case number(s) shall be indicated on the front page of each document filed by fax, except for petitions and complaints being filed to initiate proceedings before the agency.

(iv) Filing by fax shall occur only when a complete legible copy of the paper is received by the agency. If a fax is not received in legible form, it will be treated as if it had never been filed. A party attempting to file a paper by fax bears the risk that the paper will not be timely or legibly received, regardless of the cause.

(v) If receipt of a fax transmission commences after office hours, the paper will be deemed filed on the next business day the office is open.

(vi) Fax shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.

(c) FILING BY E-MAIL ATTACHMENT shall be subject to the following limitations:

(i) Parties shall only transmit one copy of the paper, as an attachment to an e-mail message identifying the party filing the paper, the total number of pages in the attachment, the software used to prepare the attachment, and the name, address, telephone number and e-mail address of the person sending the e-mail message.

(ii) The original paper filed by e-mail attachment shall be mailed to the commission's Olympia office on the same day the e-mail message and attachment are transmitted.

(iii) The case number(s) shall be indicated on the front page of each document filed by e-mail attachment, except for petitions and complaints being filed to initiate proceedings before the agency.

(iv) Filing by e-mail attachment shall occur only when a complete legible copy of the paper is received by the agency. If an e-mail attachment is not received in legible form, or cannot be opened with software on the list promulgated by the executive director under this section, it will be treated as if it had never been filed. A party attempting to file a paper by e-mail attachment bears the risk that the paper will not be timely or legibly received, regardless of the cause.

(v) If an e-mail transmission is received by the agency after office hours, the paper will be deemed filed on the next business day the office is open.

(vi) E-mail shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.

#### SERVICE ON OTHER PARTIES

(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be com-

pleted no later than the day of filing, by one of the following methods:

(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;

(b) Service may be made by first class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(d) Service may be made by fax, and shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

(e) Service may be made by e-mail attachment, and shall be regarded as completed upon transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

#### PROOF OF SERVICE

(4) On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (19). 00-14-048, § 391-08-120, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-08-120, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (18). 96-07-105, § 391-08-120, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-120, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-053 (Order 88-01), § 391-08-120, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-120, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-120, filed 1/27/77.]

**WAC 391-08-180 Continuances.** (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance shall state whether or not all other parties agree to the continuance.

If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 00-14-048, § 391-08-180, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-08-180, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-08-180, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-180, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-180, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-045 (Order 80-4), § 391-08-180, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-180, filed 1/27/77.]

**WAC 391-08-300 Subpoenas—Discovery.** The power of subpoena shall be limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.

Pursuant to the authority delegated to the agency by RCW 34.05.446(2), other forms of discovery shall not be available in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.446. 98-14-112, § 391-08-300, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. 90-06-070, § 391-08-300, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-300, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-300, filed 1/27/77.]

**WAC 391-08-310 Subpoenas—Form—Issuance to parties.** (1) Every subpoena shall:

(a) State the name of the agency as: State of Washington, public employment relations commission;

(b) State the title of the proceeding and case number; and

(c) Identify the party causing issuance of the subpoena.

(2) Every subpoena shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing, except no subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the agency staff in any proceeding before the agency.

(3) Subpoenas may be issued by the commission or its presiding officer:

(a) On the request of counsel or other representative authorized to practice before the agency; or

(b) On the request of a party not represented by counsel or other representative authorized to practice before the agency, but may then be conditioned upon a showing of gen-

eral relevance and reasonable scope of the testimony or evidence sought.

(4) Subpoenas may be issued by attorneys under the authority conferred upon them by RCW 34.05.446(1).

(5) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy of the subpoena, or by leaving a copy of the subpoena at the place of his or her abode. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(6) The party which issues or requests issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

(a) Witness fees, mileage, and allowances for meals and lodging shall be at the rates and terms allowed by the superior court for Thurston County.

(b) Witnesses shall be entitled to payment in advance for their fees for one day's attendance, together with mileage for traveling to and returning from the place where they are required to attend, if their demand for payment is made to the officer or person serving the subpoena at the time of service.

(7) The presiding officer, upon motion made at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable or oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(8) Subpoenas shall be enforced as provided in RCW 34.05.588(1).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.40.010, 5.56.010 and 34.05.446. 00-14-048, § 391-08-310, filed 6/30/00, effective 8/1/00; 99-14-060, § 391-08-310, filed 7/1/99, effective 8/1/99; 98-14-112, § 391-08-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. 90-06-070, § 391-08-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-310, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-310, filed 1/27/77.]

**WAC 391-08-315 Interpreters.** (1) For all adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC), the provisions of WAC 10-08-150 as now or hereafter amended shall apply.

(2) For all cases that are not adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-55 and 391-65 WAC), the provisions of WAC 10-08-150 as now or hereafter amended shall apply, except that all interpreter fees and expenses shall be paid by the party which requests the participation of an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.42.120 and 2.43.030. 98-14-112, § 391-08-315, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170,

41.59.080, 41.59.100, 41.59.150 and chapter 2.42 RCW. 90-06-070, § 391-08-315, filed 3/7/90, effective 4/7/90.]

**WAC 391-08-520 Declaratory orders.** Any person may petition the commission for a declaratory order, under RCW 34.05.240, with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order shall generally adhere to the following form:

(a) At the top of the page shall appear the wording "Before the Public Employment Relations Commission", a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order", and the title "Petition".

(b) The body of the petition shall set out, in numbered paragraphs:

(i) The name and address of the petitioner and the name and address, if any, of the representative appearing on behalf of the petitioner.

(ii) The name(s) and address(es) of any other party which the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s) and address(es) of their representatives, if known.

(iii) The rule(s), order(s) or statute(s) from which the controversy arises.

(iv) The facts which the petitioner wishes the commission to consider in issuing a declaratory order.

(v) The issues which the petitioner wishes the commission to address in its order.

(vi) The relief requested by the petitioner.

(vii) The reasons on which the petitioner relies to show that: Uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and 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.

(c) The petition shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on other parties named in the petition as required by WAC 391-08-120 (3) and (4).

(2) Within fifteen days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person he or she deems desirable. The notice shall establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(3) The petition and any responses from parties shall be forwarded to the commission for consideration. The commission shall not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within thirty days after receipt of the petition, 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 a reasonable time and place for a hearing to be held within ninety days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission, or submission of written argument upon the matter if the material facts are not in dispute. The commission shall give seven days or more advance written notice to the petitioner and other persons who have been given notice of the petition pursuant to subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within ninety days after receipt of the petition by which it will enter a declaratory order; or

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

(5) The commission may extend the time limits of subsection (4)(b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, including setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for such action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order shall be in writing, and shall be served upon all parties identified in subsection (2) of this section. 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 its conclusions.

(9) A declaratory order has the same status as any other order entered in an adjudicative proceeding conducted by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240.98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]

**WAC 391-08-610 Agency decisions—Service.** Every final order issued by the agency shall be served on each party or upon the agency designated by the party or by law to receive service of such papers; and a copy shall be furnished to any counsel or person appearing for a party in a representative capacity.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. 90-06-070, § 391-08-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-610, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-610, filed 1/27/77.]

**WAC 391-08-630 Agency structure—Substitution for executive director.** (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full-time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The commission's professional staff is appointed pursuant to RCW 41.58.015(3). A "multifunctional" staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution services provided by the agency. Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may also delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.

(5) In the event the executive director is disqualified from participation in a decision, the most senior (in terms of length of service with this agency) member of the agency's mediation staff, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.58.010 and 41.58.015. 98-14-112, § 391-08-630, filed 7/1/98, effective 8/1/98; 90-06-070, § 391-08-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-08-630, filed 9/16/85.]

**WAC 391-08-640 Adjudicative proceedings—Appeals.** Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.

(1) The parties shall have the right to appeal to the commission, as follows:

(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.

(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.

(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to

the issuance of the order may be appealed to the commission under WAC 391-35-210.

(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.

(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.

(2) The commission may, on its own motion, review any order which is subject to appeal under subsection (1) of this section, by giving written notice to all parties within thirty days following the issuance of the order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.464. 98-14-112, § 391-08-640, filed 7/1/98, effective 8/1/98.]

**WAC 391-08-650 Case docketing and numbering.**

The agency maintains a computerized case docketing system which is used to track and manage all requests for the dispute resolution service provided by the agency.

(1) Each case processed by the agency is identified by a unique number consisting of four components.

(a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.

(b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:

"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.

"C" indicates a unit clarification proceeding under chapter 391-35 WAC.

"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.

"E" indicates a representation proceeding under chapter 391-25 WAC.

"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.

"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.

"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.

"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.

"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of nonassociation by employees subject to union security obligations.

"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.

"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.

(c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed.

(d) The fourth component, consisting of a five-digit number, indicates the sequential number of the case within the type of dispute identified in the second component, since the agency commenced operations on January 1, 1976.

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization or labor organization are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.220. 96-07-105, § 391-08-650, filed 3/20/96, effective 4/20/96.]

**WAC 391-08-670 Decision numbering—Citation of cases—Indexing of decisions.** (1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of two or three components, as follows:

(a) The first component, consisting of a number, indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency commenced operations on January 1, 1976.

(b) The second component (where appropriate) consisting of an alphabetic code in ascending alphabetical order, indicates the second and subsequent decisions issued in the case to which the numerical component was originally assigned.

(c) The third component, consisting of a four-letter alphabetic code, indicates the statute under which the decision was issued:

"CCOL" indicates cases decided under chapter 28B.52 RCW, which is titled: "Collective Bargaining—Academic Personnel in Community Colleges."

"EDUC" indicates cases decided under chapter 41.59 RCW, which is titled: "Educational Employment Relations Act."

"MRNE" (no longer in use) was formerly used to indicate cases decided under chapter 47.64 RCW, relating to the Washington state ferries system.

"PECB" indicates cases decided under chapter 41.56 RCW, which is titled: "Public Employees' Collective Bargaining," including some cases involving port districts.

"PORT" indicates cases decided under chapter 53.18 RCW, which is titled: "Employment Relations—Collective Bargaining and Arbitration" relating to port districts.

(2001 Ed.)

"PRIV" (no longer in use) was formerly used to indicate cases decided under chapter 49.08 RCW, relating to private sector employers and employees.

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency shall conform to the formats specified in this section:

**GENERAL RULE:** Citations shall list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in parenthesis).

Examples:

*City of Roe*, Decision 1234 (PECB, 1992)

*City of Roe*, Decision 1234-A (PECB, 1993)

*City of Roe*, Decision 1234-B (PECB, 1994)

**EXCEPTION 1:** For decisions being cited within the first year following their issuance, the full date of issuance may be set forth.

Example:

*City of Roe*, Decision 1234-C (PECB, December 15, 1995)

**EXCEPTION 2:** For decisions in which an employee organization or labor organization was named as the respondent in an unfair labor practice case, the citation shall list the name of the union (in parenthesis) following the name of the employer.

Example:

*City of Roe (Doe Union)*, Decision 2345 (PECB, 1995)

(3) The agency encourages the publication and indexing of its decisions by private firms, but does not contribute financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.

(4) The agency uses a commercially published index of its decisions, along with commercially produced computer assisted research tools, in its own operations. The agency makes those indexes available to the public in its offices, to satisfy the requirements of RCW 42.17.260(5).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

**WAC 391-08-800 Agency records—Public access.** The agency shall maintain for public inspection:

(1) An index to all proceedings processed by the agency;

(2) A docket for each proceeding processed by the agency, showing the actions taken and the final resolution of each such proceeding;

(3) A schedule of hearing dates assigned in particular cases; and

(4) The files for all proceedings, including all documents filed with the agency in the particular case, except materials held in confidence as provided in WAC 391-08-810.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.220 and 34.05.476. 98-14-112, § 391-08-800, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08, 53.18 and 42.17 RCW. 90-06-070, § 391-08-800, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-800, filed 1/27/77.]

#### **WAC 391-08-810 Agency records—Confidentiality.**

The agency shall preserve the confidentiality of certain records, as follows:

(1) In order to protect the privacy of individual employees, the agency shall not permit the disclosure to any person of evidence furnished as a showing of interest in support of a representation petition or motion for intervention.

(2) In order to respect the confidential nature of mediation, the agency shall not permit the disclosure of 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 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010. 99-14-060, § 391-08-810, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 98-14-112, § 391-08-810, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010. 90-06-070, § 391-08-810, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-810, filed 1/27/77.]

#### **WAC 391-08-820 Agency offices.**

(1) The agency maintains its principal office in the city of Olympia, Washington.

(a) The street address of the Olympia office is:

Public Employment Relations Commission  
603 Evergreen Plaza  
711 Capitol Way  
Olympia, Washington 98504-0919.

(b) The mailing address of the Olympia office is:

Public Employment Relations Commission  
P.O. Box 40919  
Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

Public Employment Relations Commission  
Suite 150  
9757 Juanita Drive NE  
Kirkland, Washington 98034.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 96-07-105, § 391-08-820, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-820, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-045 (Order 80-4), § 391-08-820, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-820, filed 1/27/77.]

### **Chapter 391-25 WAC**

#### **REPRESENTATION CASE RULES**

##### **WAC**

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

[Title 391 WAC—p. 16]

391-25-002	Sequence and numbering of rules—Special provisions.
391-25-010	Petition for investigation of a question concerning representation of employees—Who may file.
391-25-011	Special provision—Classified employees of institutions of higher education.
391-25-012	Special provision—Educational employees.
391-25-030	Petition—Time for filing.
391-25-050	Petition form—Number of copies—Filing—Service.
391-25-070	Contents of petition.
391-25-090	Contents of petition filed by employer.
391-25-092	Special provision—Educational employees.
391-25-110	Supporting evidence.
391-25-130	List of employees.
391-25-140	Notice to employees.
391-25-150	Amendment and withdrawal.
391-25-170	Intervention—By incumbent representative.
391-25-190	Intervention—By organization other than incumbent.
391-25-210	Showing of interest confidential.
391-25-220	Investigation conferences.
391-25-230	Election agreements.
391-25-250	Cross-check agreements.
391-25-252	Special provision—Educational employees.
391-25-253	Special provision—Academic employees.
391-25-270	Supplemental agreements.
391-25-290	Notice of hearing.
391-25-299	Special provision—Private sector employees.
391-25-310	Hearings—Who shall conduct.
391-25-350	Hearings—Nature and scope.
391-25-370	Blocking charges—Suspension of proceedings—Request to proceed.
391-25-390	Proceedings before the executive director.
391-25-391	Special provision—Public employees.
391-25-410	Cross-check of records.
391-25-412	Special provision—Educational employees.
391-25-413	Special provision—Academic employees.
391-25-430	Notice of election.
391-25-450	Disclaimers.
391-25-470	Mail ballot election procedures—Electioneering—Objectionable conduct.
391-25-490	On-site election procedures—Electioneering—Objectionable conduct.
391-25-510	Challenged ballots.
391-25-530	Votes needed to determine election.
391-25-531	Special provision—Public employees.
391-25-550	Tally sheet.
391-25-570	Procedure following inconclusive election.
391-25-590	Filing and service of objections to improper conduct and interim orders.
391-25-610	Procedure where no objections are filed.
391-25-630	Procedure where conduct objections are filed.
391-25-650	Briefs and written arguments on objections.
391-25-660	Appeals from orders and jurisdictional rulings.
391-25-670	Commission action on objections and appeals.

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

391-25-330	Authority of hearing officer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-330, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-032 (Order 83-02), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
------------	---

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, 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.

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

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

(1) Chapter 10-08 WAC, which contains rules promulgated by the chief administrative law judge governing the

conduct of adjudicative proceedings under chapter 391-25 WAC, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 391-25-070 and 391-25-090;

(b) WAC 10-08-050, which relates to procedures of the office of administrative hearings, and so is inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is supplanted by detailed requirements in WAC 391-25-390 and 391-25-590; and

(d) WAC 10-08-230, which is supplanted by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, and 391-25-270.

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

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

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

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

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 96-07-105, § 391-25-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-072, § 391-25-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-001, filed 9/30/80, effective 11/1/80.]

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

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

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

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

(2001 Ed.)

(4) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-072, § 391-25-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-032 (Order 83-02), § 391-25-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-010 Petition for investigation of a question concerning representation of employees—Who may file.** A petition for investigation of a question concerning representation of employees, hereinafter referred to as a "petition," may be filed by any employee, group of employees, employee organization, employer or their agents.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. 90-06-072, § 391-25-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-011 Special provision—Classified employees of institutions of higher education.** The commission acquires jurisdiction over bargaining units of classified employees of institutions of higher education by a voluntary recognition process consisting of two stages.

(1) The commission acquires limited jurisdiction over a bargaining unit of classified employees of an institution of higher education as defined in RCW 41.56.030(8), upon the filing by the employer and an exclusive bargaining representative certified under chapter 41.06 RCW, of a notice of intent pursuant to RCW 41.56.201 (1)(a).

(a) The executive director shall docket a representation case to preserve a record of the transaction, but shall take no other steps to determine a question concerning representation under this chapter.

(b) The scope of bargaining and conduct of the parties in their negotiations for an initial collective bargaining agreement under chapter 41.56 RCW shall be regulated by the commission under chapter 391-45 WAC.

(c) During the parties' negotiations for an initial collective bargaining agreement under chapter 41.56 RCW, the Washington personnel resources board retains jurisdiction to determine appropriate bargaining units and to certify exclusive bargaining representatives under chapter 41.06 RCW.

(2) The commission acquires full jurisdiction over a bargaining unit of classified employees of an institution of higher education which has filed a notice of intent under this section, if the parties execute an initial collective bargaining agreement recognizing the notice of intent.

(a) The transfer of jurisdiction is effective on the first day of the month following the month during which the parties provide notice that they have executed an initial collective bargaining agreement under RCW 41.56.201 (1)(c).

(b) The executive director shall dismiss the representation case docketed upon the filing of the notice of intent, on the basis of "voluntary recognition."

(3) The jurisdiction of the commission ceases if the commission finds that the parties have reached an impasse in negotiations for an initial collective bargaining agreement under chapter 41.56 RCW.

(a) A finding of impasse shall not be made if unfair labor practice proceedings concerning the bargaining unit are pending under subsection (1)(b) of this section.

(b) The executive director shall dismiss the previously docketed representation case as "withdrawn."

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.201, 96-07-105, § 391-25-011, filed 3/20/96, effective 4/20/96.]

**WAC 391-25-012 Special provision—Educational employees.** A petition may be filed under chapter 41.59 RCW only by an employee organization or its agents (RCW 41.59.070(1)), or by employees, one of whom shall be designated as agent (RCW 41.59.070(4)).

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.59.070 (1) and (4), 90-06-072, § 391-25-012, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040, 80-14-046 (Order 80-5), § 391-25-012, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-030 Petition—Time for filing.** In order to be timely filed:

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

(2) Where a certification has been issued by the agency covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition must be filed:

(a) Not less than twelve months following the date of the certification of an exclusive bargaining representative; or

(b) Not less than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080, 96-07-105, § 391-25-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070, 90-06-072, § 391-25-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040, 80-14-046 (Order 80-5), § 391-25-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-050 Petition form—Number of copies—Filing—Service.** Each petition shall be prepared on a form furnished by the commission or on a facsimile thereof, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The party filing the petition shall serve a copy on the employer and on each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

[Title 391 WAC—p. 18]

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, 41.56.070, 41.59.070 and 41.59.080, 00-14-048, § 391-25-050, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-050, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070, 90-06-072, § 391-25-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040, 80-14-046 (Order 80-5), § 391-25-050, filed 9/30/80, effective 11/1/80.]

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

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

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

(3) The name of any organization which currently represents the employees involved and, if known, the name, address and telephone number of the principal representatives of that organization.

(4) An indication that:

(a) There has never been a collective bargaining agreement covering the employees involved; or

(b) A copy of the current or most recent applicable collective bargaining agreement is attached.

(5) A statement that the original petition is accompanied by a showing of interest required by WAC 391-25-110.

(6) Identification of:

(a) The employer's principal business;

(b) The employer department or division involved;

(c) A description of the bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions; and

(d) The approximate number of employees in that bargaining unit.

(7) A statement that:

(a) The petitioner claims it represents a majority of the employees involved, and requests certification as the exclusive bargaining 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 desire to change their exclusive bargaining representative, and to designate the petitioner as their exclusive bargaining representative; or

(c) The employees in the bargaining unit do not desire to be represented by any employee organization.

(8) Any other relevant facts.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080, 96-07-105, § 391-25-070, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080, 90-06-072, § 391-25-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040, 80-14-046 (Order 80-5), § 391-25-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-090 Contents of petition filed by employer.** (1) Where an employer has been presented with

one or more demands for recognition of an exclusive bargaining representative of previously unrepresented employees, it may obtain a determination of the question concerning representation. A petition under this subsection shall contain all of the information required by WAC 391-25-070, except as follows:

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

(b) WAC 391-25-110 shall not be applicable to petitions filed under this subsection.

(c) The employer shall attach copies of any written demand(s) for recognition or other correspondence pertaining to the claimed question concerning representation.

(2) Where an employer has a good faith belief that a majority of its employees in an existing bargaining unit no longer desire to be represented by their incumbent exclusive bargaining representative, it may obtain a determination of the question concerning representation. A petition under this subsection shall contain all of the information required by WAC 391-25-070 except as follows:

(a) The employer shall attach 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.

(b) To constitute a basis for a good faith doubt under this paragraph, signature documents provided to the employer by employees must be in a form which would qualify as supporting evidence under WAC 391-25-110 if filed by the employees directly with the commission.

(3) A petition under this section shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The employer shall serve a copy on each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 00-14-048, § 391-25-090, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-090, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. 90-06-072, § 391-25-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-054 (Order 88-02), § 391-25-090, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-092 Special provision—Educational employees.** WAC 391-25-090 is inapplicable to petitions filed under chapter 41.59 RCW. See WAC 391-25-012.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.59.070 (1) and (4). 90-06-072, § 391-25-092, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-092, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-110 Supporting evidence.** The original petition shall be accompanied by a showing of interest indicating that the petitioner has the support of thirty percent or

(2001 Ed.)

more of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest shall be furnished under the same timeliness standards applicable to the petition, and shall consist of original or legible copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Authorization documents shall not be valid unless signed and dated during the ninety-day period preceding the filing of the petition or the furnishing of such evidence to the agency, whichever is later.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 98-14-112, § 391-25-110, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-054 (Order 88-02), § 391-25-110, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 81-02-034 (Order 81-01), § 391-25-110, filed 1/6/81.]

**WAC 391-25-130 List of employees.** Within ten days following a request by the agency, the employer shall submit to the commission a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition. Following administrative determination that the petition is supported by a sufficient showing of interest, the employer shall, upon request, provide a copy of the list of names and addresses to the petitioner. Following granting of a motion for intervention, the employer shall, upon request, provide a copy of the list of names and addresses to the intervenor.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 96-07-105, § 391-25-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-140 Notice to employees.** The employer shall post a notice to employees, in the form specified by the commission, advising of the existence of proceedings under this chapter. The agency shall furnish the employer with copies of the notice, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall remain posted until a certification or interim certification is issued in the proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.050. 96-07-105, § 391-25-140, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.050. 90-06-072, § 391-25-140, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-054 (Order 88-02), § 391-25-140, filed 5/31/88.]

**WAC 391-25-150 Amendment and withdrawal.** Any petition may be amended or withdrawn by the petitioner under such conditions as the executive director or the commission may impose.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. 90-06-072, § 391-25-150, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050,

41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-150, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-170 Intervention—By incumbent representative.** An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year preceding the filing of the petition may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election. No motion for intervention shall be considered if made:

- (1) After the close of the hearing on the petition;
- (2) More than seven days after the filing and posting of an election agreement or cross-check agreement; or
- (3) More than seven days after the posting of an investigation statement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. 96-07-105, § 391-25-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-170, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-190 Intervention—By organization other than incumbent.** (1) An organization not covered by WAC 391-25-170 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 ten percent or more of the employees in the bargaining unit which the petitioner claims to be appropriate or of thirty percent or more of the employees in whatever different bargaining unit the intervenor claims to be appropriate. The showing of interest shall 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 ninety-day period preceding the filing of the motion for intervention or the furnishing of such evidence to the agency, whichever is later. The showing of interest shall be made confidentially to the agency at or before the time the motion for intervention is made: Provided, however, That a motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the agency may impose to avoid undue delay of the proceedings.

(2) No motion for intervention shall be considered if made:

- (a) After the close of the hearing on the petition;
- (b) More than seven days after the filing and posting of an election agreement or cross-check agreement; or
- (c) More than seven days after the posting of an investigation statement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. 98-14-112, § 391-25-190, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-190, filed 3/20/96, effective

4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-054 (Order 88-02), § 391-25-190, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 81-02-034 (Order 81-01), § 391-25-190, filed 1/6/81.]

**WAC 391-25-210 Showing of interest confidential.** The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing. The agency shall not disclose the identities of employees whose authorization cards or letters are furnished to the agency in support of a petition or motion for intervention. In order to preserve the confidentiality of the showing of interest and the right of employees freely to express their views on the selection of a bargaining representative, the agency shall not honor any attempt to withdraw or diminish a showing of interest.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 98-14-112, § 391-25-210, filed 7/1/98, effective 8/1/98; 90-06-072, § 391-25-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-210, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-220 Investigation conferences.** (1) The agency routinely conducts conferences with the parties, to investigate a representation petition according to a checklist provided to the parties.

(a) The issues which may properly arise in representation cases include:

- (i) The identification of the parties;
- (ii) The jurisdiction of the commission;
- (iii) The qualification of the petitioner and any intervenor(s) for certification as exclusive bargaining representative;
- (iv) The existence of a question concerning representation;
- (v) The timeliness of the petition;
- (vi) The existence of blocking charges under WAC 391-25-370;
- (vii) The propriety of the petitioned-for bargaining unit;
- (viii) The list of employees eligible to vote or be considered in determining a question concerning representation, and cut-off date for eligibility; and
- (ix) The method and arrangements for determining a question concerning representation.

(b) The investigation conference may be conducted by telephone conference call, or in-person by agency staff;

(c) The parties are encouraged to reach binding stipulations on all issues during the course of the investigation conference.

(2) The stipulations made by the parties during an investigation conference may be set forth in an investigation statement issued in lieu of an election agreement or cross-check agreement.

(a) Immediately upon receipt of an investigation statement, the employer shall post it in conspicuous places on its premises where notices to affected employees are usually

posted, and it shall remain posted for at least seven days thereafter.

(b) An investigation statement shall be binding on the parties unless written objections are filed and served as required by WAC 391-08-120 within ten days following issuance of the statement.

(3) When all conditions precedent to an election or cross-check in an appropriate bargaining unit have been met, the executive director shall proceed with the determination of the question concerning representation. Objections by parties named in the investigation statement shall be limited to matters relating to specific conduct affecting the results of an election.

(4) The parties may set forth stipulations in election agreements, cross-check agreements, and/or supplemental agreements provided for in this chapter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.431. 98-14-112, § 391-25-220, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073 and 41.56.040. 90-06-072, § 391-25-220, filed 3/7/90, effective 4/7/90.]

**WAC 391-25-230 Election agreements.** Where an employer and all other parties agree on a representation election, they may enter into an election agreement.

(1) An election agreement shall contain:

(a) The name and address of the employer and the name, address and telephone number of its principal representative;

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

(c) A description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions, and the number of employees in that unit;

(d) A statement by the parties that no organization is known which is or may be entitled to intervene as an incumbent representative, or the incumbent representative is a party to the election agreement, or the incumbent representative has abandoned the unit as evidenced by documentation attached to the election agreement;

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

(f) 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 election is to 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;

(g) The suggestions of the parties as to the arrangements for conducting the election; and

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

(2) An election agreement shall be filed at the commission's Olympia office as required by WAC 391-08-120(1),

(2001 Ed.)

and copies shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The election agreement shall remain posted for at least seven days after it is filed with the agency.

(3) Upon the filing of an election agreement conforming to the foregoing requirements and seeking an election in an appropriate bargaining unit, the executive director shall proceed to conduct an election.

(4) Objections to the election by a party to the election agreement shall be limited to matters relating to specific conduct affecting the results of the election.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 00-14-048, § 391-25-230, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-230, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 90-06-072, § 391-25-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-230, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-250 Cross-check agreements.** Where only one organization is seeking certification as the representative of unrepresented employees, the employer and the organization may enter into a cross-check agreement.

(1) A cross-check agreement shall contain:

(a) The name and address of the employer and the name, address and telephone number of its principal representative;

(b) The name and address of the organization and the name, address and telephone number of its principal representative;

(c) A description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions, and the number of employees in that unit;

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

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

(f) The suggestions of the parties as to the arrangements for conducting the cross-check;

(g) The agreement of the parties to be bound by the results of the cross-check; and

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

(2) A cross-check agreement shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The cross-check agreement shall remain posted for at least seven days after it is filed with the agency.

(3) Upon the filing of a cross-check agreement conforming to the foregoing requirements and seeking a cross-check in an appropriate bargaining unit, the executive director shall proceed with the cross-check of records. The cross-check may be conducted at any time following the execution of a cross-check agreement; but no certification shall be issued until seven days have elapsed following the filing and posting of the cross-check agreement. Where a motion for intervention is timely filed and granted, no certification shall be issued on the basis of the cross-check.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 00-14-048, § 391-25-250, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-250, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-250, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. 90-06-072, § 391-25-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-250, filed 9/30/80, effective 11/1/80.]

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

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.59.070 (1) and (4). 90-06-072, § 391-25-252, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-252, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-253 Special provision—Academic employees.** WAC 391-25-250 is inapplicable to petitions filed under chapter 28B.52 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 28B.52.030. 90-06-072, § 391-25-253, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-253, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-270 Supplemental agreements.** Where the parties are able to agree generally on the matters to be set forth in an election agreement under WAC 391-25-230 or a cross-check agreement under WAC 391-25-250, but are unable to agree on limited issues concerning the definition of the bargaining unit or employee eligibility, they may expedite the determination of the question concerning representation while reserving their disagreement for subsequent determination by entering into a supplemental agreement under this rule together with an agreement under WAC 391-25-230 or 391-25-250.

(1) A supplemental agreement shall contain:

(a) The names of all parties to the election agreement or cross-check agreement and the case number of the proceedings;

(b) 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;

(c) 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; and

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

(2) A supplemental agreement shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), together with the agreement filed under WAC 391-25-230 or 391-25-250, and copies shall be posted with such agreement.

(3) Upon the filing of a supplemental agreement, the executive director shall proceed with the determination of the question concerning representation. If the challenges are sufficient in number to affect the outcome, they shall be determined prior to the issuance of a certification. Otherwise, an interim certification shall be issued which shall be amended upon final disposition of the issues framed in the supplemental agreement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 00-14-048, § 391-25-270, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-270, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 90-06-072, § 391-25-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-270, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-290 Notice of hearing.** After a petition has been filed, if it appears to the executive director that there is reasonable cause to believe that a question concerning representation exists, there shall be issued and served on the employer and on all organizations listed in the petition and on any organization having theretofore intervened, a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. 90-06-072, § 391-25-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-054 (Order 88-02), § 391-25-290, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-290, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-299 Special provision—Private sector employees.** The commission lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. The executive director shall not proceed in such matters unless an agreement is filed under WAC 391-25-230 or 391-25-250. WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW except for hearings and issues submitted under WAC 391-25-270.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. 90-06-072, § 391-25-299, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-299, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-310 Hearings—Who shall conduct.** Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer

may be substituted for the hearing officer previously presiding.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. 90-06-072, § 391-25-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-310, filed 9/30/80, effective 11/1/80.]

#### **WAC 391-25-350 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. During the course of the hearing, the hearing officer may, upon motion by any party, or upon his or her own motion, sequester witnesses. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a clear and complete factual record upon which the commission and the executive director may discharge their duties under the pertinent statutes and these rules. Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The hearing officer may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.437, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 00-14-048, § 391-25-350, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-350, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-350, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. 90-06-072, § 391-25-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-350, filed 9/30/80, effective 11/1/80.]

#### **WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed.**

(1) The executive director may suspend the processing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings, where:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 WAC; and

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) Such unfair labor practice could improperly affect the outcome of a representation election.

(2) The complainant(s) in the unfair labor practice case may file and serve as required by WAC 391-08-120 a written request to proceed with the executive director. The request to proceed shall specify the case number of the representation proceeding, shall request that the representation petition be processed notwithstanding the pending unfair labor practice case, and shall waive the right to file objections under WAC 391-25-590 (1)(a) based on conduct alleged in the unfair labor practice case. Upon the filing of a request to pro-

(2001 Ed.)

ceed under this subsection, the executive director shall resume the processing of the representation petition and shall summarily dismiss any objections filed in conflict with the request to proceed.

(3) Where a complaint charging unfair labor practices is filed after the issuance of a notice of election, the executive director shall proceed with the determination of the question concerning representation, subject to the right of any party to file objections as provided in WAC 391-25-590.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 98-14-112, § 391-25-370, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-370, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-370, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-370, filed 9/30/80, effective 11/1/80.]

#### **WAC 391-25-390 Proceedings before the executive director.**

(1) The executive director may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate.

(a) The executive director shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter.

(b) Unless otherwise provided in a direction of election, the cut-off date for eligibility to vote in an election shall be the date of issuance of the direction of election.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3) A direction of election and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

(4) Unless appealed to the commission under WAC 391-25-660, an order issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 98-14-112, § 391-25-390, filed 7/1/98, effective 8/1/98; 90-06-072, § 391-25-390, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-054 (Order 88-02), § 391-25-390, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-25-390, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-390, filed 9/30/80, effective 11/1/80.]

#### **WAC 391-25-391 Special provision—Public employ-**

**ees.** (1) Where only one organization is seeking certification as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that the organization has been authorized by in excess of seventy percent of the employees to act as their representative for the purposes of collective bargaining, the executive director may issue a direction of cross-check.

[Title 391 WAC—p. 23]

(2) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.060. 98-14-112, § 391-25-391, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-391, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.060. 90-06-072, § 391-25-391, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-391, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-410 Cross-check of records.** (1) Where a cross-check of records is to be conducted to determine a question concerning representation, the organization shall furnish to the agency original or legible copies of individual cards or letters signed and dated by employees in the bargaining unit within ninety days prior to the filing of the petition and indicating that the employees authorize the named organization to represent them for the purposes of collective bargaining, or shall furnish to the agency membership records maintained by the organization as a part of its business records containing the names of employees and indicating those employees currently members in good standing.

(2) The agency shall honor a valid revocation of authorization contained in an individual card or letter signed by the employee and furnished to the agency by the employee.

(3) The employer shall make available to the agency original or legible copies of employment records maintained as a part of its business records containing the names and signatures of the employees in the bargaining unit.

(4) Prior to the commencement of the cross-check, the organization may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election. Any such requests shall be honored.

(5) 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.

(6) All cross-checks shall be by actual comparison of records furnished by the parties. The agency shall not disclose the names of employees giving representation authorization in favor of or appearing on the membership rolls of the organization. Upon the conclusion of the comparison of records, the agency officer conducting the cross-check shall prepare and furnish to the parties a tally sheet containing the number of employees in the bargaining unit, the number of employee records examined and the number of employee records counted as valid evidence of representation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.060. 98-14-112, § 391-25-410, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-410, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.060. 90-06-072, § 391-25-410, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-410, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-412 Special provision—Educational employees.** WAC 391-25-410 is inapplicable to petitions filed under chapter 41.59 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.59.070. 90-06-072, § 391-25-412, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-412, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-413 Special provision—Academic employees.** WAC 391-25-410 is inapplicable to petitions filed under chapter 28B.52 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 28B.52.030. 90-06-072, § 391-25-413, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-413, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-430 Notice of election.** When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:

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

(2) The deadline for return of mail ballots or the date(s), hours and polling place(s) for an on-site 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, and shall remain posted until a tally of ballots has been issued. In computing such period, the day of posting shall be counted, but the day on which the polls are opened for an on-site election shall not be counted.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, [41.56].070 and 41.59.070. 96-07-105, § 391-25-430, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. 90-06-072, § 391-25-430, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-430, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-450 Disclaimers.** An organization may disclaim a bargaining unit and have its name removed from the ballot by written notice filed and served as required by WAC 391-08-120. If a disclaimer is filed after the issuance of a notice of election, the organization filing the disclaimer shall not seek to be certified in that bargaining unit for a period of at least one year thereafter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 98-14-112, § 391-25-450, filed 7/1/98, effective 8/1/98; 90-06-072, § 391-25-450, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-450, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-470 Mail ballot election procedures—Electioneering—Objectionable conduct.** The executive director shall have discretion to conduct elections by mail ballot procedures designed to preserve the secrecy of

employee voting. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. A notice and ballot materials shall be mailed by the agency to each eligible voter, and no less than fourteen days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots.

(1) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the commission and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occurring at a time which prevents others from effectively responding; and

(iv) Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period beginning twenty-four hours before the scheduled date for the issuance of ballots to employees and continuing through the tally of ballots.

(2) Each party may be represented by observers of its own choosing at the tally of ballots.

(3) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. 96-07-105, § 391-25-470, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. 90-06-072, § 391-25-470, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-054 (Order 88-02), § 391-25-470, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-470, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-490 On-site election procedures—Electioneering—Objectionable conduct.** The executive director shall have discretion to conduct an election by on-site balloting procedures designed to preserve the secrecy of employee voting, if the circumstances of a particular case indicate that an on-site election would be more efficient or appropriate than a mail ballot election. Multiple questions, including unit determination elections, may be submitted to

(2001 Ed.)

employees at the same time on separate ballots. Absentee balloting shall not be allowed.

(1) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots.

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the commission and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occurring at a time which prevents others from effectively responding; and

(iv) Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period beginning twenty-four hours before the scheduled time for the opening of the polls and continuing through the tally of ballots.

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

(2) Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe: Provided, however, That no management official having authority over bargaining unit employees nor any officer or paid employee of an organization shall serve as observer.

(3) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. 96-07-105, § 391-25-490, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. 90-06-072, § 391-25-490, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-490, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-510 Challenged ballots.** Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in the election. No person shall be denied the right to cast a challenged ballot. The election officer shall not have authority to resolve challenges, 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

[Title 391 WAC—p. 25]

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 ascertain the position of each party as to each challenged ballot and shall include the information in his or her report. If challenges raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-25-670.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. 96-07-105, § 391-25-510, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. 90-06-072, § 391-25-510, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-510, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-530 Votes needed to determine election.** (1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.

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

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-530, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-530, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-531 Special provision—Public employees.** Where there are three or more choices on the ballot, representation elections shall be decided by a majority of those eligible to vote in the election.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.070. 90-06-072, § 391-25-531, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-531, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-550 Tally sheet.** The election officer shall prepare and furnish to each of the parties a tally of the votes cast on unchallenged ballots and the number of challenged ballots. After the subsequent resolution of challenged ballots affecting the results of the election, a revised tally shall be issued and furnished to the parties. The tally shall

indicate whether the results of the election were conclusive or inconclusive.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. 96-07-105, § 391-25-550, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-550, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-570 Procedure following inconclusive election.** In any election in which there are more than two choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a run-off election shall be held providing for selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any organization to be excluded from a run-off election may file objections to specific conduct affecting the results of the inconclusive election. Where the choice of "no representative" is to be excluded from a run-off election, the employer or decertification petitioner may file objections to specific conduct affecting the results of the inconclusive election. Such objections shall be resolved prior to the conduct of a run-off election. All run-off elections shall be determined as provided in WAC 391-25-530.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-570, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-570, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-590 Filing and service of objections to improper conduct and interim orders.** The due date for objections is seven days after the tally has been served under WAC 391-25-410 or under WAC 391-25-550, regardless of whether challenged ballots are sufficient in number to affect the results of the election. The time period for objections cannot be extended.

(1) Objections by the petitioner, the employer or any intervenor shall set forth, in separate numbered paragraphs:

(a) The specific conduct which the party filing the objection claims has improperly affected the results of the election; and/or

(b) The direction of election, direction of cross-check or other interim rulings which the objecting party desires to appeal to the commission.

(2) Objections by individual employees are limited to conduct or procedures which prevented them from casting a ballot.

(3) Any objections shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and the party filing the objections shall serve a copy on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. 00-14-048, § 391-25-590, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-590, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-590, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-590, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-590, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-610 Procedure where no objections are filed.** If no objections are filed within the time set forth above, and if any challenged ballots are insufficient in number to affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall forthwith certify the results of the proceedings, with the same force and effect as if issued by the commission. The proceedings will thereupon be closed.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. 90-06-072, § 391-25-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-610, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-630 Procedure where conduct objections are filed.** Where objections allege improper conduct under WAC 391-25-590 (1)(a) or (2), other parties may be requested to respond to the objections within a period of time established by the agency. The period shall be seven days or more.

(1) If the objections and any responses indicate 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, the commission may issue a summary judgment in the matter.

(2) If the objections and any responses raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer.

(a) Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding.

(b) The rules relating to 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.

(3) The objections, any responses, and the record made at any hearing on the objections shall be referred to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 98-14-112, § 391-25-630, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.56.040 and 41.59.110. 90-06-072, § 391-25-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-630, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-650 Briefs and written arguments on objections.** (1) The due date for any brief which the party filing an objection desires to have considered by the commission is fourteen days following the later of:

(a) The issuance of a transcript of a hearing held under WAC 391-25-630(2); or

(b) The filing of objections under WAC 391-25-590 (1)(b).

Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(2) The due date for any responsive brief which other parties desire to have considered by the commission is fourteen days following the date on which that party is served

with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(3) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 00-14-048, § 391-25-650, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-650, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. 90-06-072, § 391-25-650, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-25-650, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-650, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-660 Appeals from orders and jurisdictional rulings.** An order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. 00-14-048, § 391-25-660, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-660, filed 7/1/98, effective 8/1/98.]

**WAC 391-25-670 Commission action on objections and appeals.** If there are objections under WAC 391-25-590 or an order is appealed under WAC 391-25-660, the entire record in the proceedings shall be transmitted to the commission members. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall determine the objections or appeal and any challenged ballots referred to the commission pursuant to WAC 391-25-510, and shall issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. 00-14-048, § 391-25-670, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-670, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. 90-06-072, § 391-25-670, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-670, filed 9/30/80, effective 11/1/80.]

## Chapter 391-35 WAC

### UNIT CLARIFICATION CASE RULES

#### WAC

391-35-001	Scope—Contents—Other rules.
391-35-002	Sequence and numbering of rules—Special provisions.
391-35-010	Petition for clarification of an existing bargaining unit—Who may file.
391-35-020	Petition—Time for filing.
391-35-030	Petition form—Number of copies—Filing—Service.
391-35-050	Contents of petition.
391-35-070	Amendment and withdrawal.
391-35-080	Prehearing conferences.
391-35-090	Notice of hearing.
391-35-099	Special provision—Private sector employees.
391-35-110	Coordination of proceedings.
391-35-130	Hearings—Who shall conduct.
391-35-170	Hearings—Nature and scope.
391-35-190	Proceedings before the executive director.
391-35-210	Appeals.
391-35-250	Commission action on appeals.
391-35-300	School district employees.
391-35-310	Employees eligible for interest arbitration.

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

391-35-150	Authority of hearing officer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-150, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-033 (Order 83-03), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-35-230	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. 90-06-073, § 391-35-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-230, filed 9/30/80, effective 11/1/80.] Repealed by 98-14-112, filed 7/1/98, effective 8/1/98.

Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, 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.

#### WAC 391-35-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on petitions for clarification of existing bargaining units. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 391-35 WAC, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 391-35-050;

(b) WAC 10-08-050, which relates to procedures of the office of administrative hearings, and so is inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is supplanted by detailed requirements in WAC 391-35-210 and 391-35-230; and

(d) WAC 10-08-230, which is supplanted by detailed requirements in WAC 391-35-070 and 391-35-080.

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

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

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

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

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 96-07-105, § 391-35-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-073, § 391-35-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

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

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

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

(4) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-073, § 391-35-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-033 (Order 83-03), § 391-35-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-010 Petition for clarification of an existing bargaining unit—Who may file.** A petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative, or their agents, or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. 96-07-105, § 391-35-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-073, § 391-35-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-020 Petition—Time for filing.** (1) Disputes concerning status as a "confidential employee" may be filed at any time.

(2) Where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the covered bargaining unit filed by a party to the collective bargaining agreement will be considered timely only if:

(a) The petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the collective bargaining agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class; or

(b) The petitioner can demonstrate that, although it signed the current collective bargaining agreement covering the position or class at issue in the unit clarification proceedings:

(i) It put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class via the unit clarification procedure; and

(ii) It filed the petition for clarification of the existing bargaining unit prior to signing the current collective bargaining agreement.

(3) Disputes concerning the allocation of employees or positions between two or more bargaining units may be filed at any time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. 96-07-105, § 391-35-020, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-073, § 391-35-020, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-061 (Order 88-03), § 391-35-020, filed 5/31/88.]

**WAC 391-35-030 Petition form—Number of copies—Filing—Service.** Each petition for clarification of an existing bargaining unit shall be prepared on a form furnished by the commission or shall be prepared in conformance with WAC 391-35-050, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). 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, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. 00-14-048, § 391-35-030, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-35-030, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-35-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. 90-06-073, § 391-35-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-030, filed 9/30/80, effective 11/1/80.]

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

(1) Information identifying the parties and their relationships, including:

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

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

(c) The employer's principal business;

(d) The parties' contractual relationship, indicating that:

(i) The parties' have never had a contract; or

(ii) A copy of the current or most recent applicable collective bargaining agreement is attached;

(e) The status of negotiations between the parties, indicating that:

(i) The parties' contract is closed; or

(ii) The parties are currently in contract negotiations;

(f) The description of the existing bargaining unit, specifying inclusions and exclusions;

(g) The number of employees in the bargaining unit; and

(h) The history of the bargaining unit, including at least the approximate date of its creation.

(2) Identification of the issues of the proposed clarification, including listing the position(s), classification(s) or group(s) at 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.

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

(4) Any other relevant facts.

(5) The signature(s) and, if any, the title(s) of the representative(s) of the petitioner(s), and the date of signature.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. 96-07-105, § 391-35-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. 90-06-073, § 391-35-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-070 Amendment and withdrawal.** Any petition may be amended or withdrawn by the petitioner(s) under such conditions as the executive director or the commission may impose.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. 90-06-073, § 391-35-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-080 Prehearing conferences.** The hearing officer has discretion to conduct a prehearing conference to discuss with the parties all issues of law, fact, and procedure which may arise in unit clarification cases. The prehearing conference shall be conducted pursuant to WAC 10-08-130. The parties are encouraged to reach binding stipulations on such matters during the course of the prehearing conference.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.431. 96-07-105, § 391-35-080, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073 and 41.56.040. 90-06-073, § 391-35-080, filed 3/7/90, effective 4/7/90.]

**WAC 391-35-090 Notice of hearing.** After a petition for clarification of an existing bargaining unit has been filed, if it appears to the executive director that a disagreement exists which might appropriately be the subject of an order clarifying an existing bargaining unit, there shall be issued and served on the employer and on the exclusive representative a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. 90-06-073, § 391-35-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-099 Special provision—Private sector employees.** The commission lacks authority to proceed in unit clarification proceedings under chapter 49.08 RCW absent the agreement of all parties. The executive director

shall not proceed in such matters unless a written agreement is filed by the parties to submit their dispute for arbitration by the commission under chapter 49.08 RCW and these rules.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. 90-06-073, § 391-35-099, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-099, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-110 Coordination of proceedings.** (1) A unit clarification petition cannot be processed if a question concerning representation exists. If a petition for clarification under this chapter is pending at the same time as a petition under chapter 391-25 WAC involving all or any part of the same bargaining unit, the proceedings under this chapter shall be suspended, and all issues concerning the description of the bargaining unit shall be resolved in the proceedings under chapter 391-25 WAC.

(2) A unit clarification proceeding may control or be controlled by an unfair labor practice proceeding. If a petition for clarification under this chapter is pending at the same time as a complaint under chapter 391-45 WAC involving all or any part of the same bargaining unit, the executive director shall have discretion to withhold processing of one of the related proceedings pending the outcome of the other related proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.070. 96-07-105, § 391-35-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-073, § 391-35-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-130 Hearings—Who shall conduct.** Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. 90-06-073, § 391-35-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-170 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. During the course of the hearing, the hearing officer may, upon motion by any party, or upon his or her own motion, sequester witnesses. 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 and the executive director may discharge their duties under the pertinent statutes and these rules. Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing. Any party shall be entitled, upon request made before the close of

the hearing, to file a brief. The hearing officer may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.060 and 41.59.080. 00-14-048, § 391-35-170, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-35-170, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-35-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.59.080 and 53.18.015. 90-06-073, § 391-35-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-170, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-190 Proceedings before the executive director.** (1) The executive director may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine the status of each position, classification or group of employees over which there is a disagreement and issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3) Unless appealed to the commission under WAC 391-35-210, an order issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. 98-14-112, § 391-35-190, filed 7/1/98, effective 8/1/98; 90-06-073, § 391-35-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-35-190, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-190, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-210 Appeals.** An order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the

(2001 Ed.)

document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. 00-14-048, § 391-35-210, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-35-210, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. 90-06-073, § 391-35-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-35-210, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-210, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-250 Commission action on appeals.** If an order is appealed under WAC 391-35-210, the entire record in the proceedings shall be transmitted to the commission members. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall determine the status of each position, classification or group covered by the appeal, and shall issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. 00-14-048, § 391-35-250, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-35-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. 90-06-073, § 391-35-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-250, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-300 School district employees.** A collective bargaining relationship cannot lawfully be maintained under the Educational Employment Relations Act, chapter 41.59 RCW, with respect to school district jobs for which a professional education certificate is not required by chapter 28A.410 RCW, as implemented through rules adopted by the state board of education and the office of the superintendent of public instruction, or by established practice or written policy of the employing school district. Any collective bargaining rights of employees performing school district jobs

not requiring a professional education certificate are regulated by the Public Employees' Collective Bargaining Act, chapter 41.56 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.59.010 and [41.59].020. 96-07-105, § 391-35-300, filed 3/20/96, effective 4/20/96.]

**WAC 391-35-310 Employees eligible for interest arbitration.** Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.430. 96-07-105, § 391-35-310, filed 3/20/96, effective 4/20/96.]

### Chapter 391-45 WAC

#### UNFAIR LABOR PRACTICE CASE RULES

##### WAC

391-45-001	Scope—Contents—Other rules.
391-45-002	Sequence and numbering of rules—Special provisions.
391-45-010	Complaint charging unfair labor practices—Who may file.
391-45-019	Special provision—Private sector employees.
391-45-030	Complaint in writing—Number of copies—Filing—Service.
391-45-050	Contents of complaint.
391-45-070	Amendment.
391-45-090	Withdrawal.
391-45-110	Deficiency notice—Preliminary ruling—Deferral to arbitration.
391-45-130	Examiner—Who may act.
391-45-170	Notice of hearing.
391-45-190	Answer—Filing and service.
391-45-210	Answer—Contents—Amendment—Effect of failure to answer.
391-45-250	Motion to make complaint more definite and detailed.
391-45-260	Settlement conference.
391-45-270	Hearings—Reopening of hearing.
391-45-290	Briefs.
391-45-310	Examiner decision.
391-45-330	Withdrawal or modification of examiner decision.
391-45-350	Appeals.
391-45-390	Commission action on appeals.
391-45-410	Unfair labor practice remedies—Back pay.
391-45-430	Motion for temporary relief.
391-45-550	Collective bargaining—Policy.
391-45-552	Special provision—Educational employees.

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

391-45-013	Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-013, filed 9/30/80, effective 11/1/80.] Repealed by 88-12-056 (Order 88-05), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.
391-45-150	Authority of examiner. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-150, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-034 (Order 83-04), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-45-171	Special provision—Public employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-171, filed 9/30/80, effective 11/1/80.] Repealed by 86-11-054 (Order 86-01), filed 5/20/86. Statutory Authority: RCW 34.04.033 [34.04.022], 41.58.050, 41.56.090 and 41.59.110.

391-45-230 Amendment of answer. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. 90-06-074, § 391-45-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-230, filed 9/30/80, effective 11/1/80.] Repealed by 00-14-048, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050.

391-45-370 Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. 90-06-074, § 391-45-370, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-370, filed 9/30/80, effective 11/1/80.] Repealed by 98-14-112, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-45-431 Special provision—Public employees. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.190. 90-06-074, § 391-45-431, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-431, filed 9/30/80, effective 11/1/80.] Repealed by 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.160.

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, 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.

#### WAC 391-45-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on complaints charging unfair labor practices. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-45-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-45-350 and 391-45-390; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-45-070, 391-45-090, and 391-45-260.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 00-14-048, § 391-45-001, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-45-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. 90-06-074, § 391-45-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-001, filed 9/30/80, effective 11/1/80.]

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

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

(2) Special provisions relating to chapter 49.08 RCW (Private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 00-14-048, § 391-45-002, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. 90-06-074, § 391-45-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-034 (Order 83-04), § 391-45-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-010 Complaint charging unfair labor practices—Who may file.** A complaint charging that a person has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.040, 41.58.040, 41.59.060 and 53.18.015. 00-14-048, § 391-45-010, filed 6/30/00, effective 8/1/00; 90-06-074, § 391-45-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-019 Special provision—Private sector employees.** The provisions of chapter 391-45 WAC are inapplicable to private sector collective bargaining under chapter 49.08 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 49.08.020. 90-06-074, § 391-45-019, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-019, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-030 Complaint in writing—Number of copies—Filing—Service.** Each complaint charging unfair labor practices shall be in writing, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The party filing the complaint shall serve a copy on

each party named as a respondent, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. 00-14-048, § 391-45-030, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-030, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-45-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. 90-06-074, § 391-45-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-030, filed 9/30/80, effective 11/1/80.]

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

(1) Information identifying the parties and (if known) their representatives, including:

(a) The name, address and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The name, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (respondent), and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

(c) The name, address, telephone number, fax number, and e-mail address of the party filing the complaint (complainant), and the name, address, telephone number, fax number, and e-mail address of its principal representative.

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

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

(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.

(5) Information concerning the parties' relationships, including:

(a) The employer's principal business;

(b) Identification of the employer department or division in which the dispute arises;

(c) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or

(ii) A copy of the current (or most recent) collective bargaining agreement is attached;

(d) The status of related grievance proceedings between the parties, indicating that:

(i) No grievance has been filed on the dispute involved; or

(ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or

(iii) An arbitration award has been issued on a related grievance;

(e) A description of the bargaining unit involved, specifying inclusions and exclusions; and

(f) The number of employees in the bargaining unit.

(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. 00-14-048, § 391-45-050, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-45-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080,

41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.56.180, 41.59.150 and 53.18.015. 90-06-074, § 391-45-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-070 Amendment.** (1) A complaint may be amended upon motion made by the complainant, if:

(a) The proposed amendment only involves the same parties as the original complaint;

(b) The proposed amendment is timely under any statutory limitation as to new facts;

(c) The subject matter of the proposed amendment is germane to the subject matter of the complaint as originally filed or previously amended; and

(d) Granting the amendment will not cause undue delay of the proceedings.

(2) Motions to amend complaints shall be subject to the following limitations:

(a) Prior to the appointment of an examiner, amendment shall be freely allowed upon motion to the agency official responsible for making preliminary rulings under WAC 391-45-110;

(b) After the appointment of an examiner but prior to the opening of an evidentiary hearing, amendment may be allowed upon motion to the examiner and subject to due process requirements;

(c) After the opening of an evidentiary hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made prior to the close of the evidentiary hearing.

(3) Where a motion for amendment is denied, the proposed amendment shall be processed as a separate case.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.140, 41.56.150, 41.56.170, 41.59.140 and 53.18.015. 00-14-048, § 391-45-070, filed 6/30/00, effective 8/1/00; 90-06-074, § 391-45-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-090 Withdrawal.** (1) A complaint may be withdrawn by the complainant, by a written request filed before issuance of a decision by an examiner.

(2) A withdrawal "without prejudice" shall not vary any statutory time limitation for filing of unfair labor practice complaints, unless the parties file a written agreement for a different arrangement prior to the expiration of the applicable statutory period.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. 00-14-048, § 391-45-090, filed 6/30/00, effective 8/1/00; 90-06-074, § 391-45-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-110 Deficiency notice—Preliminary ruling—Deferral to arbitration.** The executive director or a designated staff member shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice shall be issued and

[Title 391 WAC—p. 34]

served on all parties, identifying the defects and specifying a due date for the filing and service of an amended complaint. If the defects are not cured in a timely manner, an order shall be issued and served, dismissing the defective allegation(s) and stating the reasons for that action. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection shall be the final order of the agency on the defective allegation(s), with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a preliminary ruling summarizing the allegation(s) shall be issued and served on all parties. The preliminary ruling shall establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered where:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings shall be considered binding, except where:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 28B.52.073, 34.05.419, 41.56.140, 41.56.150 and 41.59.140. 00-14-048, § 391-45-110, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-110, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-45-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. 90-06-074, § 391-45-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-130 Examiner—Who may act.** The executive director or a designated staff member shall assign an examiner to conduct further proceedings in the matter, and shall notify the parties of that assignment. The examiner may be a member of the agency staff or any other individual designated by the commission or executive director. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. 00-14-048, § 391-45-130, filed

6/30/00, effective 8/1/00; 96-07-105, § 391-45-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.56.170 and 53.18.015. 90-06-074, § 391-45-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-170 Notice of hearing.** The examiner shall issue a notice of hearing and have it served on the parties. Attached to the notice of hearing shall be a copy of the preliminary ruling issued under WAC 391-45-110. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.434, 41.56.160 and 41.59.150. 00-14-048, § 391-45-170, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-45-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. 90-06-074, § 391-45-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-170, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-190 Answer—Filing and service.** An answer to a complaint charging unfair labor practices shall be in writing. The respondent shall file its answer as required by WAC 391-08-120(1), and shall serve a copy on the complainant, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. 00-14-048, § 391-45-190, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-190, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-45-190, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. 90-06-074, § 391-45-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-190, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-210 Answer—Contents—Amendment—Effect of failure to answer.** (1) An answer filed by a respondent shall specifically admit, deny or explain each fact alleged in the portions of a complaint found to state a cause of action under WAC 391-45-110. A statement by a respondent that it is without knowledge of an alleged fact, shall operate as a denial. An answer shall assert any affirmative defenses that are claimed to exist.

(2) Counterclaims by a respondent against a complainant shall be filed and processed as separate cases, subject to procedures for consolidation of proceedings.

(3) Motions to amend answers shall be acted upon by the examiner, subject to the following limitations:

(a) Amendment shall be allowed whenever a motion to amend the complaint has been granted;

(b) Amendment may be allowed prior to the opening of an evidentiary hearing, subject to due process requirements;

(c) After the opening of an evidentiary hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made prior to the close of the evidentiary hearing.

(4) If a respondent fails to file a timely answer or fails to specifically deny or explain a fact alleged in the complaint, the facts alleged in the complaint shall be deemed to be admitted as true, and the respondent shall be deemed to have

(2001 Ed.)

waived its right to a hearing as to the facts so admitted. A motion for acceptance of an answer after its due date shall only be granted for good cause.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. 00-14-048, § 391-45-210, filed 6/30/00, effective 8/1/00; 90-06-074, § 391-45-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-210, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-250 Motion to make complaint more definite and detailed.** The examiner may direct that the complaint be made more definite and detailed, upon motion of the respondent, if the examiner is satisfied that the complaint is so indefinite as to hamper the respondent in the preparation of its answer.

(1) The respondent shall file its motion on or before the date specified for the filing of an answer. The motion shall be filed and served as required by WAC 391-08-120.

(2) The filing of a motion under this section shall extend the due date for the respondent's answer until a date set by the examiner.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. 00-14-048, § 391-45-250, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. 90-06-074, § 391-45-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-250, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-260 Settlement conference.** A settlement conference may be held under WAC 10-08-200(15), on the examiner's own motion or at the request of any party to the proceeding. Any settlement conference shall be held in advance of the scheduled hearing date. During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute. Participation in a settlement conference is voluntary. Refusal by a party to participate shall not prejudice that party in any manner.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431, 41.56.160 and 41.59.150. 00-14-048, § 391-45-260, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-45-260, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. 90-06-074, § 391-45-260, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-056 (Order 88-05), § 391-45-260, filed 5/31/88.]

**WAC 391-45-270 Hearings—Reopening of hearing.**

(1) Hearings shall be public, except where a protective order is issued under WAC 10-08-200(7), and shall be limited to the portions of a complaint found to state a cause of action under WAC 391-45-110.

(a) The complainant shall be responsible for the presentation of its case, and shall have the burden of proof.

(b) The respondent shall be responsible for the presentation of its defense, and shall have the burden of proof as to any affirmative defenses.

(c) The examiner's authority under WAC 10-08-200 (8) and (9) shall not be construed as authorizing or requiring the

[Title 391 WAC—p. 35]

examiner to undertake the responsibilities of the complainant or respondent under this subsection.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 00-14-048, § 391-45-270, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-45-270, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. 90-06-074, § 391-45-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-270, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-290 Briefs.** Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The examiner may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the examiner. Any brief shall be filed with the examiner as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.160 and 41.59.150. 00-14-048, § 391-45-290, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-290, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-45-290, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. 90-06-074, § 391-45-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-290, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-310 Examiner decision.** After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. 90-06-074, § 391-45-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-330 Withdrawal or modification of examiner decision.** The examiner may set aside, modify, change or reverse any findings of fact, conclusions of law or order, if any mistake is discovered in the decision.

(1) Action may be taken under this section on the examiner's own motion, or on a written motion filed and served by any party as required by WAC 391-08-120.

(2) Action may only be taken under this section within ten days following issuance of the decision.

(3) This section shall be inoperative after the filing of an appeal to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 00-14-048, § 391-45-330, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-330, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-45-330, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050,

28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. 90-06-074, § 391-45-330, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-330, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-350 Appeals.** An order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. 00-14-048, § 391-45-350, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-350, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. 90-06-074, § 391-45-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-45-350, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-350, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-390 Commission action on appeals.** If an order is appealed under WAC 391-45-350, the entire record in the proceedings shall be transmitted to the commission members. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the record and any briefs or arguments submitted to it, determine the appeal, and shall issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. 00-14-048, § 391-45-390, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-390, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. 90-06-074, § 391-45-390, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-390, filed 9/30/80, effective 11/1/80.]

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

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

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. 00-14-048, § 391-45-410, filed 6/30/00, effective 8/1/00; 90-06-074, § 391-45-410, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-410, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-430 Motion for temporary relief.** In addition to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may make 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) When the complaint is filed, or as soon thereafter as facts giving rise to the request for temporary relief become known, the complainant shall file written notice of its intent to make a motion for temporary relief with the executive director as required by WAC 391-08-120(1), and shall serve a copy of the notice on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4).

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

(2001 Ed.)

(3) After a determination that the complaint states a cause of action under WAC 391-45-110, the complainant may file and serve, as required by WAC 391-08-120, a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies.

(4) If there is a motion for temporary relief, the due date for counter-affidavits from other parties is seven days following the date on which that party is served with a motion for temporary relief. The counter-affidavits shall be filed and served as required by WAC 391-08-120.

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

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

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

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

(c) A determination by the commission that temporary relief should not be sought at a particular time shall not bar renewal of the motion for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.160(3) and 41.59.150. 00-14-048, § 391-45-430, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-430, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073 and 41.59.150. 90-06-074, § 391-45-430, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-430, filed 9/30/80, effective 11/1/80.]

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

ular 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 a particular issue does not and cannot confer the status of a mandatory subject on a nonmandatory subject.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.030(4), 41.59.020(2) and 53.18.015. 00-14-048, § 391-45-550, filed 6/30/00, effective 8/1/00; 90-06-074, § 391-45-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-550, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-552 Special provision—Educational employees.** The obligation to bargain in good faith imposed upon an employer and the exclusive representative of its employees, respectively, by RCW 41.59.020(2) and 41.59.140 (1)(e) or (2)(c) includes:

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

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

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

(4) The obligation to exhaust the mediation and fact finding procedure established pursuant to RCW 41.59.120 before implementing all or any part of a final offer in negotiations, except as provided in RCW 41.59.930.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 00-14-048, § 391-45-552, filed 6/30/00, effective 8/1/00; 90-06-074, § 391-45-552, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 81-02-034 (Order 81-01), § 391-45-552, filed 1/6/81.]

### Chapter 391-55 WAC

#### IMPASSE RESOLUTION RULES

##### WAC

391-55-001	Scope—Contents—Other rules.
391-55-002	Sequence and numbering of rules—Special provisions.
391-55-010	Impasses in contract negotiations—Request for mediation—Service.
391-55-020	Grievance mediation—Request for grievance mediation—Service.
391-55-030	Assignment of mediator.
391-55-032	Special provision—Educational employees.
391-55-050	Submission of written proposals.
391-55-070	Function of mediator.
391-55-071	Special provision—State patrol personnel.

391-55-090	Confidential nature of mediation.
391-55-110	Dispute resolution panel—Membership.
391-55-120	Dispute resolution panel—Referral and selection procedures.
391-55-130	Disclosure.
391-55-150	Vacancies.
391-55-200	Interest arbitration—Certification of issues.
391-55-205	Interest arbitration—Appointment of partisan arbitrators.
391-55-210	Interest arbitration—Selection of neutral chairperson.
391-55-215	Interest arbitration—Conduct of proceedings—Waiver of objections.
391-55-220	Interest arbitration—Submission of proposals for arbitration.
391-55-225	Interest arbitration—Prehearing conference—Hearing.
391-55-230	Interest arbitration—Order of proceedings and evidence.
391-55-235	Interest arbitration—Arbitration in the absence of a party.
391-55-240	Interest arbitration—Closing of arbitration hearings.
391-55-245	Interest arbitration—Award.
391-55-255	Interest arbitration—Expenses of arbitration.
391-55-265	Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings.
391-55-300	Educational employees—Fact finding.
391-55-310	Educational employees—Selection of fact finder.
391-55-315	Educational employees—Conduct of fact finding proceedings—Waiver of objections.
391-55-320	Educational employees—Submission of proposals for fact finding.
391-55-325	Educational employees—Fact finding hearing.
391-55-330	Educational employees—Order of proceedings and evidence.
391-55-335	Educational employees—Fact finding in the absence of a party.
391-55-340	Educational employees—Closing of fact finding hearings.
391-55-345	Educational employees—Findings of fact and recommendations.
391-55-350	Educational employees—Responsibility of parties after fact finding.
391-55-355	Educational employees—Expenses of fact finding.

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

391-55-033	Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-033, filed 9/30/80, effective 11/1/80.] Repealed by 88-12-055 (Order 88-08), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.
391-55-260	Uniformed personnel—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-260, filed 9/30/80, effective 11/1/80.] Repealed by 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
391-55-360	Educational employees—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-360, filed 9/30/80, effective 11/1/80.] Repealed by 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
391-55-400	State patrol personnel—Fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-055 (Order 88-08), § 391-55-400, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-400, filed 9/30/80, effective 11/1/80.] Repealed by 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
391-55-410	State patrol personnel—Selection of fact finder. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-055 (Order 88-08), § 391-55-410, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-410, filed 9/30/80, effective 11/1/80.] Repealed by 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.



391-55-560

effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.  
 Marine employees—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-560, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, 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.

### WAC 391-55-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission relating to the resolution of impasses occurring in collective bargaining. The provisions of this chapter should be read in conjunction with the provisions of:

- (1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.
- (2) Chapter 391-25 WAC, which regulates representation proceedings.
- (3) Chapter 391-35 WAC, which regulates unit clarification proceedings.
- (4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.
- (5) Chapter 391-65 WAC, which regulates grievance arbitration proceedings.
- (6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

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

Special provisions relating to interest arbitration for bargaining units under chapter 41.56 RCW are set forth beginning with WAC 391-55-200.

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

[Title 391 WAC—p. 40]

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-002, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-002, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-055 (Order 88-08), § 391-55-002, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-035 (Order 83-05), § 391-55-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-010 Impasses in contract negotiations—Request for mediation—Service.** A request for mediation may be made in writing, by electronic telefacsimile transmission, or by telephone, but shall be confirmed in writing if made by telephone. The original request shall be submitted to the commission's Olympia office, as required by WAC 391-08-120(2). If the request is not submitted jointly, the party submitting the request shall serve a copy, as required by WAC 391-08-120 (3) and (4), on the other party to the dispute. The party or parties requesting mediation shall provide the following information to the agency:

- (1) The name, address and telephone number of the employer and the name, address and telephone number of its principal representative.
- (2) The name, address and telephone number of the employee organization and the name, address and telephone number of its principal representative.
- (3) The employer's principal business.
- (4) The parties' contractual relationship, indicating that:
  - (a) The parties' have never had a contract; or
  - (b) A copy of the current or most recent applicable collective bargaining agreement is attached.
- (5) A description of the bargaining unit involved, specifying inclusions and exclusions.
- (6) The number of employees in the bargaining unit.
- (7) The history of the bargaining unit, including at least the approximate date of its creation.
- (8) The history of the current negotiations, including at least the number of meetings held, the date of the first meeting and whether both parties concur in the request for mediation.
- (9) Identification of the issues in dispute and the parties' positions on those issues.
- (10) The name(s), signature(s) and, if any, title(s) of the representative(s) of the requesting party (parties), and the date(s) of the signature(s).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060 and 41.56.100. 99-14-060, § 391-55-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 34.05.413 and 41.56.100. 96-07-105, § 391-55-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-020 Grievance mediation—Request for grievance mediation—Service.** A request for appointment of a grievance mediator may be made in writing or by electronic telefacsimile transmission. The original request shall be submitted to the commission's Olympia office, as required by WAC 391-08-120(2). If the request is not submitted jointly, the party submitting the request shall serve a copy, as required by WAC 391-08-120 (3) and (4), on the

(2001 Ed.)

other party to the collective bargaining agreement under which the dispute arises. The party or parties requesting grievance mediation shall provide the following information to the agency:

(1) Information identifying the parties to the dispute, including:

(a) The name, address and telephone number of the employer and the name, address and telephone number of its principal representative;

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

(c) The employer's principal business;

(d) A copy of the current or most recent applicable collective bargaining agreement;

(e) A description of the bargaining unit involved, specifying inclusions and exclusions;

(f) The number of employees in the bargaining unit;

(g) The agreement of the party or parties making the request that any unresolved issues shall be submitted to an arbitrator for a final and binding decision; and

(h) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to grievance mediation.

(2) Identification of the grievance to be resolved in grievance mediation.

(3) Designation of the request as:

(a) A request for appointment of a member of the agency staff as grievance mediator; or

(b) A request for the submission of a list containing a specified number of names from the dispute resolution panel created by WAC 391-55-110.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-020, filed 7/1/99, effective 8/1/99.]

**WAC 391-55-030 Assignment of mediator.** (1) Upon submission of a request under WAC 391-55-010 or 391-55-020 (3)(a), a member of the agency staff shall be assigned as mediator. If the parties have stipulated to the names of one or more persons who are acceptable to both parties as mediator, their request shall be considered in making the assignment.

(2) Upon submission of a request for a list under WAC 391-55-020 (3)(b), names shall be referred and a grievance mediator shall be selected under WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 00-14-048, § 391-55-030, filed 6/30/00, effective 8/1/00; 99-14-060, § 391-55-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-032 Special provision—Educational employees.** Upon submission of a unilateral request for mediation, the executive director shall consider the position of the party other than the party making the request, and shall evaluate whether the parties have exchanged and considered the proposals of one another and whether the intervention of the agency will have a beneficial impact on the negotiating

(2001 Ed.)

process. Prior to making this determination, the executive director or a member of the agency staff may make an on-site investigation and may engage in conciliation under the general authority conferred on the commission by RCW 41.58.020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-032, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-032, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-050 Submission of written proposals.**

Parties requesting the mediation services of the agency are encouraged to submit to the assigned mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-070 Function of mediator.** The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-071 Special provision—State patrol personnel.** In the case of mediation involving officers of the Washington state patrol appointed under RCW 43.43.020, the mediator shall not consider rates of pay or wage levels and any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-071, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-055 (Order 88-08), § 391-55-071, filed 5/31/88.]

**WAC 391-55-090 Confidential nature of mediation.** Mediation meetings shall not be open to the public. Confidential information acquired by a mediator shall not be disclosed to others outside of the mediation process for any purpose, and a mediator shall not give testimony about the mediation in any legal or administrative proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 5.60.072. 99-14-060, § 391-55-090, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-110 Dispute resolution panel—Membership.** The commission shall establish and maintain a panel of individuals qualified to serve in an impartial capacity in the resolution of labor disputes.

[Title 391 WAC—p. 41]

(1) Applicants for membership on the dispute resolution panel shall demonstrate minimum background and experience equal to the minimum qualifications for the working level positions on the professional staff of the commission:

(a) A master's degree in labor relations, personnel management or industrial relations or closely allied field, or a law degree; and

(b) At least three years of experience in collective bargaining with major work assignments in negotiations, contract administration or related work as a union or management representative, mediator, arbitrator or educator in the above areas; and

(c) Additional qualifying experience shall substitute, year for year, for education.

(2) Applicants for membership on the dispute resolution panel shall furnish letters of recommendation supporting their acceptability as an impartial from:

(a) At least one management representative; and

(b) At least one union representative; and

(c) At least one impartial arbitrator, mediator or labor relations administrative agency official.

(3) Applicants who desire to be referred for interest arbitration proceedings shall demonstrate their experience as an impartial in at least five grievance arbitration, fact finding or interest arbitration cases, by submitting copies of arbitration awards which can be provided, upon request, to parties selecting an interest arbitrator.

(4) Applicants for membership on the dispute resolution panel shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications and affiliations. All information submitted shall be subject to administrative verification.

(5) Applications of persons appearing to be qualified for membership on the panel shall be forwarded to the commission for consideration and action. The commission shall review each application submitted to it, together with the supporting letters of recommendation, and shall notify the applicant of the determination made.

(6) Whenever it appears to the commission that an applicant or member of the dispute resolution panel has failed or refused to comply with applicable statutes, rules and ethical standards, the application shall be rejected or the member shall be removed from the dispute resolution panel. A member shall also be removed from the panel if he or she has:

(a) Ceased accepting appointments as an impartial in the resolution of labor disputes; or

(b) Failed to keep the agency informed of their current address and telephone number.

(7) Persons referred from the dispute resolution panel shall be impartial. No active member of the dispute resolution panel may serve in any capacity as an advocate or representative for either labor or management in labor relations matters. Any member of the panel who intends to engage in advocacy work shall notify the executive director and shall be placed on inactive status while their advocacy work continues.

(8) Upon appointment to the dispute resolution panel by the commission, the panel member may be placed under contract pursuant to chapter 39.29 RCW. Only persons listed on

the panel shall be compensated by the agency under a personal service contract.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-110, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-035 (Order 83-05), § 391-55-110, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-120 Dispute resolution panel—Referral and selection procedures.** (1) All referrals from the dispute resolution panel shall be by random selection among the panel members eligible for the type of proceeding involved, subject to the following:

(a) If the parties do not specify the number of names requested, the agency shall supply seven names.

(b) Where the parties request a specific number of names, the agency shall supply the number requested plus two additional names for use as alternates to reduce the potential need for second lists, or for use as agreed by the parties.

(c) The agency shall furnish biographical information, including background, qualifications and experience, on each of the arbitrators on the list supplied to the parties.

(d) The agency shall supply the parties with a second list, upon submission of their joint written request.

(2) The parties may use any method agreed upon for selecting an impartial from the list provided by the agency. In the absence of agreement on any other method, they shall alternately strike names from the list, with the order of striking determined by lot.

(3) All contacts and arrangements between the parties and a selected dispute resolution panel member are the responsibility of the parties. The fees and travel expenses of the dispute resolution panel member shall be paid by the parties under applicable rules or as agreed by the parties.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-120, filed 7/1/99, effective 8/1/99.]

**WAC 391-55-130 Disclosure.** Prior to accepting the appointment, or as soon as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity in a dispute resolution proceeding under the jurisdiction of the commission shall disclose to the parties and to the executive director any circumstances likely to create an appearance of bias or which might disqualify him or her from serving in the impartial capacity. Employment of the person or any member of his or her immediate family by any party shall be disqualifying. Each party to the proceeding shall immediately notify the executive director and the appointee or selectee whether it is willing to waive disqualification. If either party declines to waive the disqualification, the appointment shall be vacated.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-130, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-150 Vacancies.** If any person serving in an impartial capacity in dispute resolution proceedings under the jurisdiction of the commission should resign, die, withdraw, refuse or be unable to serve, or should be or become disqualified to perform the duties of the office, the executive director shall declare the office vacant. The vacancy shall be filled in the same manner as an original appointment.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-150, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-200 Interest arbitration—Certification of issues.** (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(7), 41.56.475 or 41.56.492 has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) For a bargaining unit covered by RCW 41.56.030(7) or 41.56.475, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450, 41.56.475 and 41.56.492. 99-14-060, § 391-55-200, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450 and [41.56].492. 96-07-105, § 391-55-200, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

(2001 Ed.)

**WAC 391-55-205 Interest arbitration—Appointment of partisan arbitrators.** Within seven days following the issuance of a certification of issues for interest arbitration under WAC 391-55-200, each party shall name one person who is available and willing to serve as its member of the arbitration panel, and shall notify the opposite party and the executive director of the name, address and telephone number of the partisan arbitrator. The partisan arbitrators shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairperson of the arbitration panel.

(1) The use of partisan arbitrators shall be deemed waived if neither party has notified the executive director of its appointee within fourteen days following the issuance of a certification of issues for interest arbitration, and the parties' principal representatives shall then select the neutral chairperson.

(2) A party which has designated a partisan arbitrator may substitute another person as its partisan arbitrator, upon notice to the other party and the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-205, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-205, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-035 (Order 83-05), § 391-55-205, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-205, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-210 Interest arbitration—Selection of neutral chairperson.** (1) If the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve, and shall notify the executive director of the identity of the chairperson.

(2) If the parties agree to have the commission appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the commission. Upon the submission of a request in compliance with this subsection, the executive director shall appoint a neutral chairperson from the commission staff.

(3) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the commission, the Federal Mediation and Conciliation Service or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall proceed forthwith to request a panel of at least five arbitrators specifying: "For interest arbitration proceedings under RCW 41.56.450." Referrals and selection from the commission's dispute resolution panel shall be as provided in WAC 391-55-120. Referrals and selection from other panels shall be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(4) If the parties have not notified the executive director of their selection of a neutral chairperson within twenty-eight

days after certification of issues under WAC 391-55-200, the parties shall be deemed to have waived the procedures in subsections (1) through (3) of this section. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson shall be selected as provided in WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-210, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-210, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-035 (Order 83-05), § 391-55-210, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-210, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-215 Interest arbitration—Conduct of proceedings—Waiver of objections.** Proceedings shall be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. 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 in writing, shall be deemed to have waived its right to object.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-215, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-215, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-215, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-220 Interest arbitration—Submission of proposals for arbitration.** At least fourteen days before the date of the hearing, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties shall not be entitled to submit issues which were not among the issues certified under WAC 391-55-200.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-220, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-220, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-225 Interest arbitration—Prehearing conference—Hearing.** (1) The neutral chairperson may, upon his or her own motion or upon request of a party, convene a prehearing conference or conferences.

(a) The purpose or purposes of a prehearing conference include to consider:

- (i) Simplification of issues;
- (ii) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
- (iii) Limitations on the number and consolidation of the examination of witnesses;
- (iv) Procedural matters;
- (v) Distribution of written testimony and exhibits to the parties prior to the hearing; and
- (vi) Such other matters as may aid in the disposition or settlement of the case.

[Title 391 WAC—p. 44]

(b) Prehearing conferences may be held by telephone conference call or at a time and place specified by the neutral chairperson.

(c) Following a prehearing conference, the neutral chairperson shall issue an order reciting the action taken at the conference, and the agreements made by the parties concerning all of the matters considered. If no objection is filed within ten days after the date that the order is mailed, it shall control the subsequent course of the case unless modified for good cause by subsequent order.

(2) The arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice to the parties. For good cause shown, the neutral chairperson may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

(a) A tape recording of the hearing shall be taken and shall be the official record of the hearing, unless the parties agree to take a transcript. If the parties do not agree to take a transcript and share in its cost, a party may take a transcript at its own expense. If a copy of the transcript is provided to the neutral chairperson, all parties shall have access to a copy.

(b) The statutory prohibition against a partisan arbitrator presenting the case for a party shall not preclude another member of the same organization or firm from presenting the case at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-225, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-225, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-225, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-230 Interest arbitration—Order of proceedings and evidence.** The order of presentation at the hearing shall be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the neutral chairperson and copies shall be provided to the partisan arbitrators and to the other parties. The exhibits shall be retained by the neutral chairperson until an agreement has been signed or until any judicial review proceedings have been concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairperson. The neutral chairperson has authority to administer oaths, to require the attendance of witnesses, and to require the production of documents that he or she may deem to be material.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-230, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-230, filed 9/30/80, effective 11/1/80.]

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

person shall require the participating party to submit evidence as may be required for making of the findings of fact and determining the issues.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-235, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-235, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-235, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-240 Interest arbitration—Closing of arbitration hearings.** The neutral chairperson shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-240, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-240, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-240, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-245 Interest arbitration—Award.** The rulings and determination of the neutral chairperson shall be controlling, and shall not require concurrence, but may be accompanied by the concurring and/or dissenting opinions of the partisan arbitrators. The rulings and determinations shall not be subject to appeal to the commission, but the neutral chairperson shall submit a copy of the award to the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-245, filed 7/1/99, effective 8/1/99; 98-14-112, § 391-55-245, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-55-245, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-245, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-255 Interest arbitration—Expenses of arbitration.** Each party shall pay the expenses of presenting its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairperson appointed pursuant to WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a tape recording of the proceedings, shall be shared equally between the parties. The fees and traveling expense of a neutral chairperson appointed by the commission pursuant to WAC 391-55-210(2), along with the costs of tapes for a tape recording of the proceedings but not a transcription or the services of a court reporter, shall be paid by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-255, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-255, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-265 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings.** (1) The executive director shall suspend the certification of some or all issues under WAC 391-55-200, as follows:

(a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective

(2001 Ed.)

bargaining must communicate its concerns to the other party during bilateral negotiations and/or mediation. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed illegality, the objecting party must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the "collective bargaining" obligations imposed by RCW 41.56.030(4) must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings.

(c) If a preliminary ruling is issued under WAC 391-45-110 that an unfair practice violation could be found on a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint shall be made before any determination is made in interest arbitration on the disputed issue or issues.

(2) Issues suspended under subsection (1) of this section shall be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that the suspended issue or issues was/were unlawfully advanced or affected by unlawful conduct, the issue or issues shall be stricken from the certification under WAC 391-55-200, and the party advancing the proposal shall only be permitted to advance such modified proposals as are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that the suspended issue or issues was/were lawfully advanced, the suspension under this section shall be terminated and the issue or issues shall be remanded to the interest arbitration panel for ruling on the merits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. 99-14-060, § 391-55-265, filed 7/1/99, effective 8/1/99.]

**WAC 391-55-300 Educational employees—Fact finding.** If a dispute involving educational employees within the meaning of RCW 41.59.020(4) has not been settled after ten days of mediation, either party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party. The parties may, by agreement made at any time prior to the appointment of a fact finder, extend the period for mediation or place in the hands of the mediator the determination of when mediation has been exhausted so as to warrant the initiation of fact finding.

[Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-310 Educational employees—Selection of fact finder.** (1) Upon the submission of a timely request for fact finding, the executive director shall invite the parties to exercise their right under RCW 41.59.120(5).

(a) The executive director shall furnish a list of members of the dispute resolution panel and the parties shall meet within seven days following receipt of the list, to attempt to select a fact finder. Names shall be referred and any fact

finder shall be selected under WAC 391-55-120. The parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and shall notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder under RCW 41.59.120(5), they shall notify the executive director.

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder from the commission staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 99-14-060, § 391-55-310, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-035 (Order 83-05), § 391-55-310, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-315 Educational employees—Conduct of fact finding proceedings—Waiver of objections.** Proceedings shall be conducted as provided in WAC 391-55-300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party who proceeds with fact finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 99-14-060, § 391-55-315, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-315, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-320 Educational employees—Submission of proposals for fact finding.** At least seven days before the date of the hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact finding. Parties shall not be entitled to submit issues which were not among the issues mediated under WAC 391-55-070.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 99-14-060, § 391-55-320, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-325 Educational employees—Fact finding hearing.** The fact finder shall establish a date, time and place for a hearing. The fact finding hearing shall be open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

[Title 391 WAC—p. 46]

[Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-330 Educational employees—Order of proceedings and evidence.** The order of presentation at the hearing shall be as agreed by the parties or as determined by the fact finder. The fact finder shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the fact finder and copies shall be provided to the other parties. The exhibits shall be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 99-14-060, § 391-55-330, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-335 Educational employees—Fact finding in the absence of a party.** The fact finder may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations shall not be made solely on the default of a party, and the fact finder shall require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 99-14-060, § 391-55-335, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 81-02-034 (Order 81-01), § 391-55-335, filed 1/6/81.]

**WAC 391-55-340 Educational employees—Closing of fact finding hearings.** The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 99-14-060, § 391-55-340, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-345 Educational employees—Findings of fact and recommendations.** The findings of fact and recommendations of the fact finder shall not be subject to appeal to the commission, but the fact finder shall submit a copy of his or her written recommendations to the executive director. Fact finders shall rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties and shall not rule on whether or not a subject or proposal in dispute is a mandatory subject for collective bargaining.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 98-14-112, § 391-55-345, filed 7/1/98, effective 8/1/98; 96-

07-105, § 391-55-345, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 81-02-034 (Order 81-01), § 391-55-345, filed 1/6/81.]

**WAC 391-55-350 Educational employees—Responsibility of parties after fact finding.** Within seven days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder. If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may request mediation pursuant to chapter 41.58 RCW and, upon the concurrence of the other party, the agency shall assign a mediator.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. 00-14-048, § 391-55-350, filed 6/30/00, effective 8/1/00; 99-14-060, § 391-55-350, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-355 Educational employees—Expenses of fact finding.** Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a fact finder appointed by the commission shall be paid by the commission.

[Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-035 (Order 83-05), § 391-55-355, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]

## Chapter 391-65 WAC

### GRIEVANCE ARBITRATION RULES

#### WAC

391-65-001	Scope—Contents—Other rules.
391-65-002	Sequence and numbering of rules—Special provisions.
391-65-010	Grievance arbitration—Who may submit.
391-65-030	Grievance arbitration—Request for grievance arbitration—Service.
391-65-050	Grievance arbitration—Contents of request.
391-65-070	Grievance arbitration—Appointment of staff arbitrator.
391-65-072	Special provision—Educational employees.
391-65-073	Special provision—Academic employees.
391-65-090	Grievance arbitration—Designation of panel of arbitrators.
391-65-110	Grievance arbitration—Conduct of proceedings.
391-65-130	Grievance arbitration—Award.
391-65-150	Grievance arbitration—Expenses.

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

391-65-074	Special provisions—Marine employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-074, filed 9/30/80, effective 11/1/80.] Repealed by 88-12-057 (Order 88-09), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.
391-65-094	Special provision—Marine employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-094, filed 9/30/80, effective 11/1/80.] Repealed by 88-12-057 (Order 88-09), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.
391-65-500	Marine employees—Grievance arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), §

391-65-510	Marine employees—Intervention and consolidation of proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-510, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-515	Marine employees—Conduct of grievance arbitration proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-515, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-525	Marine employees—Hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-525, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-530	Marine employees—Order of proceedings and evidence. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-530, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-535	Marine employees—Arbitration in the absence of a party. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-535, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-540	Marine employees—Closing of hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-540, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-545	Marine employees—Examiner decision. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-545, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-550	Marine employees—Petition for review of examiner decision. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-550, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-555	Marine employees—Commission action. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-555, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-65-560	Marine employees—Grievance arbitration remedies. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-560, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, 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.

**WAC 391-65-001 Scope—Contents—Other rules.**

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

- (1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.
- (2) Chapter 391-25 WAC, which regulates representation proceedings.
- (3) Chapter 391-35 WAC, which regulates unit clarification proceedings.
- (4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.
- (5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.
- (6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-65-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

- (1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.
- (2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.
- (3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-65-002, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-036 (Order 83-06), § 391-65-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-010 Grievance arbitration—Who may submit.** Where there is an agreement to arbitrate, a request for appointment of an arbitrator to hear and determine issues arising out of the interpretation or application of a collective bargaining agreement may be submitted by the employer, the

exclusive representative or their agents or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-030 Grievance arbitration—Request for grievance arbitration—Service.** A request for appointment of a grievance arbitrator may be made in writing or by electronic telefacsimile transmission. The request shall be on a form furnished by the commission or prepared by the party or parties submitting the request in conformance with WAC 391-65-050. The original request shall be submitted to the commission's Olympia office, as required by WAC 391-08-120(2). If the request is not submitted jointly the party submitting the request shall serve a copy, as required by WAC 391-08-120 (3) and (4), on the other party to the collective bargaining agreement under which the dispute arises.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.50.413 and 41.56.125. 96-07-105, § 391-65-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-050 Grievance arbitration—Contents of request.** Each request for appointment of a grievance arbitrator shall contain:

- (1) Information identifying the parties to the dispute, including:
  - (a) The name, address and telephone number of the employer and the name, address and telephone number of its principal representative;
  - (b) The name, address and telephone number of the employee organization and the name, address and telephone number of its principal representative;
  - (c) The employer's principal business;
  - (d) A copy of the current or most recent applicable collective bargaining agreement;
  - (e) A description of the bargaining unit involved, specifying inclusions and exclusions;
  - (f) The number of employees in the bargaining unit;
  - (g) The agreement of the party or parties making the request to accept the decision of the arbitrator as final and binding; and
  - (h) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to arbitration.
- (2) Identification of the grievance to be resolved in arbitration.
- (3) Designation of the request as:
  - (a) A request for appointment of a member of the agency staff as arbitrator; or
  - (b) A request for the submission of a list containing a specified number of names from the dispute resolution panel created by WAC 391-55-110.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413 and 41.56.125. 96-07-105, § 391-65-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-057 (Order 88-09), § 391-65-050, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-070 Grievance arbitration—Appointment of staff arbitrator.** Upon concurrence of the parties or upon the submission of a joint request, a member of the agency staff shall be assigned as grievance arbitrator. The parties shall not be permitted to select a grievance arbitrator from a list of agency staff members, or to exercise a right of rejection on appointments made under this section; but may jointly express a preference for appointment of one or more staff members as their arbitrator, and their request shall be considered in making the assignment. Upon the submission of a request by one party for the appointment of a member of the agency staff as grievance arbitrator, the agency shall determine whether the other party to the collective bargaining agreement concurs in the appointment of a staff arbitrator. In the absence of concurrence, the agency shall notify the requesting party of the lack of concurrence and shall close the case if concurrence is not provided within a reasonable time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 00-14-048, § 391-65-070, filed 6/30/00, effective 8/1/00; 99-14-060, § 391-65-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-072 Special provision—Educational employees.** The agency does not appoint members of the agency staff as arbitrators in grievance arbitration proceedings under chapter 41.59 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-072, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-073 Special provision—Academic employees.** The agency does not appoint members of the agency staff as arbitrators in grievance arbitration proceedings under chapter 28B.52 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-073, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-090 Grievance arbitration—Designation of panel of arbitrators.** Upon the request of a party, the agency shall furnish a list of members of the dispute resolution panel. Names shall be referred and an arbitrator shall be selected under WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-090, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and

(2001 Ed.)

47.64.040. 80-14-050 (Order 80-9), § 391-65-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-110 Grievance arbitration—Conduct of proceedings.** The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff shall be kept in the public files of the agency.

(2) The services of a member of the commission staff as arbitrator shall be subject to interruption for reassignment of the staff member to other functions of the agency having a higher priority.

(3) Except as provided in subsections (1) and (2) of this section, all 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 on May 29, 1985.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-110, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-65-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-130 Grievance arbitration—Award.** Any arbitrator assigned or selected under this chapter for a dispute involving public employees shall, after sending the arbitration award to the parties, submit a copy to the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-130, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-65-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-150 Grievance arbitration—Expenses.** Each party shall pay the expenses of presenting its own case and the expenses and fees of its member, if any, of an arbitration panel. The expenses of witnesses shall be paid by the party producing them. The costs for recording and/or transcription of proceedings shall be paid by the parties under the terms of their collective bargaining agreement or as agreed by the parties. The commission shall pay the salary and traveling expenses of a staff member assigned under WAC 391-65-070, but no other expenses of the proceedings. The parties shall pay the fees and expenses of a dispute resolution panel member selected under WAC 391-65-090, as provided in WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-150, filed 9/30/80, effective 11/1/80.]

## Chapter 391-95 WAC

### UNION SECURITY DISPUTE RULES

#### WAC

391-95-001

Scope—Contents—Other rules.

[Title 391 WAC—p. 49]

391-95-010	Notice of union security obligation.
391-95-030	Assertion of right of nonassociation.
391-95-050	Response by exclusive bargaining representative.
391-95-070	Disputes resolved by commission.
391-95-090	Petition in writing—Number of copies—Filing—Service.
391-95-110	Contents of petition.
391-95-130	Escrow of disputed funds by employer.
391-95-150	Deficiency notice—Preliminary ruling.
391-95-170	Notice of hearing.
391-95-190	Examiner—Who may act.
391-95-230	Hearings—Reopening of hearing.
391-95-250	Examiner decision.
391-95-260	Withdrawal or modification of examiner decision.
391-95-270	Appeals.
391-95-290	Commission action on appeals.
391-95-310	Implementation.

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

391-95-210	Authority of hearing officer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-210, filed 9/30/80, effective 11/1/80.] Repealed by 83-24-037 (Order 83-07), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-95-280	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-280, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-037 (Order 83-07), § 391-95-280, filed 12/1/83, effective 1/1/84.] Repealed by 98-14-112, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, 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.

#### WAC 391-95-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on disputes concerning the right of nonassociation under the union security provisions of certain statutes. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-95-270 and 391-95-290; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-95-170.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings.

(5) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(6) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(7) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 00-14-048, § 391-95-001, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-95-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. 90-06-075, § 391-95-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-001, filed 9/30/80, effective 11/1/80.]

#### WAC 391-95-010 Notice of union security obligation.

(1) Whenever a collective bargaining agreement negotiated under the provisions of chapter 28B.52, 41.56, or 41.59 RCW contains a union security provision, the exclusive bargaining representative shall provide each affected employee with a copy of the collective bargaining agreement, and shall specifically advise each employee of his or her obligations 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.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall be resolved through unit clarification proceedings under chapter 391-35 WAC, and shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of a union security provision shall be resolved through grievance arbitration or other procedures for interpretation or application of the collective bargaining agreement, and shall not be a subject of proceedings under this chapter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-010, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-058 (Order 88-10), § 391-95-010, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-010, filed 9/30/80, effective 11/1/80.]

#### WAC 391-95-030 Assertion of right of nonassociation.

An employee who claims 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 provide written notice of that claim to the exclusive bargaining representative, and shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-030, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-058 (Order 88-10), § 391-95-030, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and

47.64.040. 80-14-051 (Order 80-10), § 391-95-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-050 Response by exclusive bargaining representative.** Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-030, the exclusive bargaining representative shall provide a written response to the employee, setting forth the position of the exclusive bargaining representative as to both:

- (1) The eligibility of the employee to make alternative payments; and
- (2) The acceptance or rejection of the charitable organization(s) suggested by the employee.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-050, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-070 Disputes resolved by commission.** If the exclusive bargaining representative:

- (1) Disputes the eligibility of the employee to make alternative payments; or
- (2) Disputes the charitable organization which is to receive such payments; or
- (3) Fails to make a timely response under WAC 391-95-050, either the employee or the exclusive bargaining representative may obtain a ruling from the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-070, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-070, filed 7/1/98, effective 8/1/98; 90-06-075, § 391-95-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-090 Petition in writing—Number of copies—Filing—Service.** Each petition for a ruling on a nonassociation claim shall be in writing, and shall be filed at the commission's Olympia office as required by WAC 391-08-120(1). The party filing the petition shall serve a copy on the other party to the dispute and on the employer as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.413, 41.56.122 and 41.59.100. 00-14-048, § 391-95-090, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-090, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-95-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-110 Contents of petition.** Each petition for a ruling on a nonassociation claim shall contain, in separate numbered paragraphs:

- (1) Information identifying the parties and (if known) their representatives, including:
  - (a) The name, address and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(2001 Ed.)

- (b) The name, address and telephone number of the employee organization, and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

- (c) The name, address, telephone number, fax number, and e-mail address of the employee who has asserted a right of nonassociation, and the name, address, telephone number, fax number, and e-mail address of his or her representative.

(2) Indicate the matters in dispute as including:

- (a) The eligibility of the employee to assert a right of nonassociation; and/or

- (b) The designation of the charity to receive the alternative payments.

(3) Indicate whether the petition is filed on behalf of:

- (a) The employee; or

- (b) The employee organization.

- (4) The name, signature and, if any, title of the person filing the petition, and the date of the signature.

- (5) Information concerning the parties' relationships, including:

- (a) The employer's principal business;

- (b) A copy of the current (or most recent) collective bargaining agreement; and

- (c) A description of the bargaining unit involved, specifying inclusions and exclusions.

- (6) Indicate whether the claimed right of nonassociation is based upon:

- (a) Personal religious beliefs; or

- (b) Upon the teachings of a church or religious body identified in the petition, including the name, address, telephone number, fax number, and e-mail address of its contact person.

- (7) The name(s) of the charity or charities to which the petitioner proposes to make alternative payments, including the name(s), address(es), telephone number(s), fax number(s), and e-mail address(es) of its/their contact person(s).

- (8) Indicate whether disputed funds are being held in escrow by the employer.

- (9) Any other relevant facts.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.413, 41.56.122 and 41.59.100. 00-14-048, § 391-95-110, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-95-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-130 Escrow of disputed funds by employer.** Upon being served with a copy of a petition filed under WAC 391-95-070, the employer shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Funds held in escrow shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the employer 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. This section shall be applicable to employees covered by chapter 41.56 RCW only upon the employee sub-

[Title 391 WAC—p. 51]

mitting to the employer a signed authorization for the deduction and escrow of disputed funds.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-130, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 81-02-034 (Order 81-01), § 391-95-130, filed 1/6/81.]

**WAC 391-95-150 Deficiency notice—Preliminary ruling.** The executive director or a designated staff member shall determine whether the facts alleged in the petition may constitute a basis for assertion of a right of nonassociation within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a basis for assertion of a right of nonassociation, a deficiency notice shall be issued and served on all parties, identifying the defects and specifying a due date for the filing and service of an amended petition. If the defects are not cured in a timely manner, an order shall be issued and served, dismissing the defective allegation(s) and stating the reasons for that action. Unless appealed to the commission under WAC 391-95-270, an order of dismissal issued under this subsection shall be the final order of the agency on the defective allegation(s), with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for nonassociation proceedings before the commission, a preliminary ruling summarizing the allegation(s) shall be issued and served on all parties.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.419, 41.56.122 and 41.59.100. 00-14-048, § 391-95-150, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-150, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-150, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-95-150, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-150, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-170 Notice of hearing.** The examiner shall issue a notice of hearing and have it served on the employee and the exclusive bargaining representative. Attached to the notice of hearing shall be a copy of the preliminary ruling issued under WAC 391-95-150. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.434, 41.56.122 and 41.59.100. 00-14-048, § 391-95-170, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.431, [34.05].434, 41.56.122 and 41.59.100. 96-07-105, § 391-95-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-95-170, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-170, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-190 Examiner—Who may act.** The executive director or a designated staff member shall assign an examiner to conduct further proceedings in the matter,

[Title 391 WAC—p. 52]

and shall notify the parties of that assignment. The examiner may be a member of the agency staff or any other individual designated by the commission or executive director. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-190, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-95-190, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-190, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-230 Hearings—Reopening of hearing.**

(1) Hearings shall be public and shall be limited to the portions of a petition found to state a cause of action under WAC 391-95-150.

(2) The employee has the burden to make a factual showing, through testimony of witnesses and/or documentary evidence, of the legitimacy of his or her beliefs, as follows:

(a) In cases where the claim of a right of nonassociation is based on the teachings of a church or religious body, the claimant employee shall demonstrate:

(i) His or her bona fide religious objection to union membership; and

(ii) That the objection is based on a bona fide religious teaching of a church or religious body; and

(iii) That the claimant employee is a member of such church or religious body.

(b) In cases where the claim of a right of nonassociation is based on personally held religious beliefs, the claimant employee shall demonstrate:

(i) His or her bona fide religious objection to union membership; and

(ii) That the religious nature of the objection is genuine and in good faith.

(3) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(4) Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The examiner may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the examiner. Any brief shall be filed with the examiner as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.437, 41.56.122 and 41.59.100. 00-14-048, § 391-95-230, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-230, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-95-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-058 (Order 88-10), § 391-95-230, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-230, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-250 Examiner decision.** After the close of the hearing and the filing of all briefs, the examiner shall

issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-95-270, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-250, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-250, filed 7/1/98, effective 8/1/98; 90-06-075, § 391-95-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-95-250, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-250, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-260 Withdrawal or modification of examiner decision.** The examiner may set aside, modify, change, or reverse any findings of fact, conclusions of law or order, if any mistake is discovered in the decision.

(1) Action may be taken under this section on the examiner's own motion, or on a written motion filed and served by any party as required by WAC 391-08-120.

(2) Action may only be taken under this section within ten days following issuance of the decision.

(3) This section shall be inoperative after the filing of an appeal to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 00-14-048, § 391-95-260, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-260, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-95-260, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-260, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-95-260, filed 9/16/85.]

**WAC 391-95-270 Appeals.** An order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by

the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.464, 41.56.122 and 41.59.100. 00-14-048, § 391-95-270, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-270, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-95-270, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-95-270, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-270, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-290 Commission action on appeals.** If an order is appealed under WAC 391-95-270, the entire record in the proceedings shall be transmitted to the commission members. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the record and any briefs or arguments submitted to it, determine the appeal, and shall issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.464, 41.56.122 and 41.59.100. 00-14-048, § 391-95-290, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-95-290, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, § 391-95-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-290, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-310 Implementation.** (1) Where alternative payments in lieu of payments under a union security agreement have been agreed upon by the parties or ordered by the commission:

(a) The employer shall release any funds (together with accumulated interest) held in escrow under WAC 391-95-130 to the designated charitable organization; and

(b) 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.

(2) Where the employee is found ineligible to make alternative payments:

(a) The employer shall release any funds (together with accumulated interest) held in escrow under WAC 391-95-130 to the exclusive bargaining representative; and

(b) The employer 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 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-310, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 81-02-034 (Order 81-01), § 391-95-310, filed 1/6/81.]