

WSR 22-17-165
PROPOSED RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION
[Filed August 24, 2022, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-07-045.

Title of Rule and Other Identifying Information: Revisions to Title 391 WAC.

Hearing Location(s): October 7, 2022, at 10:00 a.m., by Zoom <https://perc-wa-gov.zoom.us/j/2679794803>. Public viewing also available at 112 Henry Street, Suite 300, Olympia, WA 90504 [98504].

Date of Intended Adoption: November 8, 2022.

Submit Written Comments to: Michael Sellars, 112 Henry Street, Suite 300, Olympia, WA 98504, email mike.sellars@perc.wa.gov, fax 360-570-7334, info@perc.wa.gov, by September 30, 2022.

Assistance for Persons with Disabilities: Contact Diane Tucker, phone 360-570-7335, fax 360-570-7334, email diane.tucker@perc.wa.gov, info@perc.wa.gov, by September 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision of rules that govern agency practice and procedures in all types of cases, including representation cases, unit clarification cases, unfair labor practice cases, impasse resolution cases, grievance arbitration cases, and grievance mediation cases as well as public records requests.

Reasons Supporting Proposal: Agency rules need revision to streamline agency procedures to reflect changes in practice to add greater efficiencies and to reflect changes of agency practice based upon recent agency case law. Rules are also needed to implement chapter 13, Laws of 2021 (SB 5055), which requires the agency to maintain a law enforcement disciplinary grievance arbitration roster.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, 49.39.060.

Statute Being Implemented: RCW 41.58.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Public employment relations commission, governmental.

Name of Agency Personnel Responsible for Drafting: Dario de la Rosa, Dianne Ramerman, Christopher Casillas, 112 Henry Street, Suite 300, Olympia, WA 98504, 360-570-7300; Implementation and Enforcement: Michael P. Sellars, 112 Henry Street, Suite 300, Olympia, WA 98504, 360-570-7306.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amendments to the agency's rules are procedural in nature relating to any agency hearings and any filing or related process requirement for making application to an agency or a policy statement pertaining to the consistent internal operations of an agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to

agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

August 10, 2022
Dario de la Rosa
Rules Coordinator

OTS-3723.1

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-001 Application and scope ((of chapter 391-08 WAC)).

((Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.340); section 15, chapter 356, Laws of 2002 (RCW 41.76.060); section 7, chapter 6, Laws of 2010 (RCW 49.39.060); and section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess., to promulgate)) The purpose of chapter 391-08 WAC is to provide comprehensive and uniform rules ((for)) of 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 and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(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)). To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge under RCW 34.05.250 and found in chapter 10-08 WAC, these rules prevail.~~

~~((In the event of a conflict)) If a conflict arises between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule ((shall)) governs.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-001, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, and 49.39.060. WSR 10-20-172, § 391-08-001, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-08-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 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. WSR 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.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

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)) commission are liberally construed to effectuate the purposes and provisions of the

statutes administered by the agency(~~(, and)~~). Nothing in any rule (~~(shall be construed to)~~) prevents the (~~(commission and its authorized agents)~~) agency from using (~~(their)~~) its best efforts to adjust any labor dispute. The (~~(commission and its authorized agents)~~) agency 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). WSR 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

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

- (1) "Agency" means the public employment relations commission, its officers, and its agents;
- (2) "Commission" means the commissioners of the public employment relations commission appointed by the governor;
- (3) "Executive director" means the officer of that title appointed by the commission (~~(pursuant to)~~) under RCW 41.58.015(2);
- (4) "Labor dispute" means any controversy concerning terms or conditions of employment(~~(r)~~) 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) (~~("Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.~~
- (~~6~~)) "Presiding officer" means an agency official(~~(-s)~~), examiner, or hearing officer (~~(or other person authorized to act on behalf of the agency)~~).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-007, filed 2/15/12, effective 3/17/12. 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. WSR 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. WSR 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. WSR 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.]

NEW SECTION

- WAC 391-08-008 Agency structure.** (1) The agency maintains an impartial role in all proceedings pending before it.
- (2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate under 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 under 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 agency's staff is appointed under RCW 41.58.015(3). Individual members of the agency's staff are assigned to conduct any or all of the types of dispute resolution services provided by the agency.

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AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-08-010 (~~(Appearance and practice before agency)~~) Who may appear before the agency—Notice of appearance. (1) (~~(No person)~~) Any of the following 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) A bona fide officer, employee, or other authorized representative of ((÷)) (i) any employer subject to the jurisdiction of the agency((τ)) or (ii) any ((~~labor or~~)) employee organization((τ));~~
or

~~((iii)) (b) An individual or their authorized representative.~~

(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, email address, mailing address, and telephone number (~~(, fax number, and email address)~~).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-08-010, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 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. WSR 90-06-070, § 391-08-010, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-010, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

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))~~ agency is grounds for ((summary)) suspension or 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)) appearing before the agency 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. WSR 90-06-070, § 391-08-020, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-020, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-030 Appearance and practice before agency—((Appearance by)) Former employee of agency or former member of attorney general's staff as representative. ~~((No))~~ A 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))~~ may not, 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 in which ((was pending before the agency)) that person participated personally or substantially during the time of ((his or her)) employment with the agency or attorney general.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 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. WSR 90-06-070, § 391-08-030, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-030, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-040 Appearance and practice before agency—Former employee or former member of attorney general's staff as witness. Except upon the express written consent of the ~~((commission, no))~~ agency, a 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))~~ may not, 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 in which ((was pending before the agency)) that person par-

anticipated personally or substantially during the time of ((his or her)) employment with the agency or attorney general.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 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. WSR 90-06-070, § 391-08-040, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-040, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

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, ~~((a))~~ legal holiday, in which event the period runs until the end of the next day ~~((which))~~ that is ~~((neither))~~ not a Saturday, Sunday ~~((nor a)), or legal~~ holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays ~~((shall be))~~ are excluded ~~((in))~~ from the computation.

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

AMENDATORY SECTION (Amending WSR 16-05-033, filed 2/9/16, effective 3/11/16)

WAC 391-08-120 Filing and service of ~~((papers))~~ documents. (1) ~~((Documents filed with the agency shall be filed at the Olympia office.))~~ The agency will post on its website at www.perc.wa.gov information ~~((containing the street address for filing by personal delivery, the mailing addresses for filing by mail, the telephone number for filing by fax transmission, and the email address or other method to be used for electronic filing))~~ for filing using the agency's e-filing system, the email address for filing by email, the mailing address for filing by mail, and the street address for filing by personal delivery.

(2) Documents may be filed with the agency by one of the following methods:

(a) ~~((In person.))~~ E-filing on the agency's website at www.perc.wa.gov;

(b) ~~((By))~~ Email to filing@perc.wa.gov;

(c) First class, registered, or certified mail ~~((-~~

~~-e) By))~~ to the agency's Olympia mailing address;

~~(d) Commercial parcel delivery ((company-~~
~~(d) Electronically by email, fax transmission, or)) to the agency's Olympia office;~~

~~(e) Hand delivery to the agency's Olympia office; or~~

~~(f) Other methods posted ((by)) on the agency website at www.perc.wa.gov.~~

(3) Documents filed with the agency ((shall)) must be served ((upon)) on all parties on the same day the documents are filed. Service ((shall)) must be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law.

(4) Unless otherwise ordered by the agency in a particular proceeding, filing and service is complete upon one or a combination of the following methods:

(a) ~~((Hand delivery.))~~ E-filing. Filing is complete when a legible copy of the document is successfully uploaded to the e-filing system. Service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of service.

(b) Email. Filing or service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of filing or service.

~~(c) Depositing the ((documents, properly)) document(s) correctly addressed and postage paid, in the U.S. mail.~~

~~((e))~~ (d) Acceptance of the ((documents)) document(s) for delivery by a commercial parcel delivery company.

~~((d) Receipt of entire fax transmission by the recipient and receipt by the sending party of confirmation of receipt of the fax transmission. If receipt of a fax commences after office hours, the paper will be deemed filed on the next business day the office is open.~~

~~(e) Receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email or electronic filing constitutes the time of service. If an electronic filing is received by the agency after office hours, the documents will be deemed filed on the next business day the office is open.~~

~~(5))~~ (e) Hand delivery.

(5) A document uploaded to the agency's e-filing system or an email received by the agency after 5:00 p.m. is considered filed on the following business day.

(6) On the same day that filing and service of documents is completed under subsection (3) of this section, the person who completed service ((shall)) must take one of the following actions:

(a) Obtain ~~((an acknowledgment of service from the person who accepted personal service))~~ the confirmation of filing and service upon the recipient(s) generated by the agency's e-filing system under subsection (4) (a) of this section((; or)).

(b) Make a certificate stating that the person signing the certificate completed service of the ~~((papers))~~ document(s) by:

(i) ~~((Personally delivering a copy under subsection (4) (a))~~ Electronically transmitting a copy under subsection (4) (b) of this section; ((or))

(ii) Mailing a copy under subsection (4) ~~((b))~~ (c) of this section; ~~((or))~~

(iii) Depositing a copy (~~(under subsection (4)(c) of this section)~~) with a commercial parcel delivery company named in the certificate under subsection (4)(d) of this section; or

(iv) (~~(Electronically transmitting the documents under subsection (4)(d) or (e))~~) Personally delivering a copy under subsection (4)(e) of this section.

~~((6))~~ (c) Obtain an acknowledgment of service from the person who accepted personal service under subsection (4)(e) of this section.

(7) Where the sufficiency of service is contested, (~~(an acknowledgment of service obtained under subsection (5)(a) of this section or)~~) a confirmation of filing obtained under subsection (6)(a) of this section, a certificate of service made under subsection (~~((5))~~) (6)(b) of this section (~~(shall)~~), or an acknowledgment of service obtained under subsection (6)(c) of this section constitutes proof of service.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-05-033, § 391-08-120, filed 2/9/16, effective 3/11/16. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (19). WSR 00-14-048, § 391-08-120, filed 6/30/00, effective 8/1/00; WSR 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). WSR 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. WSR 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. WSR 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. WSR 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.]

NEW SECTION

WAC 391-08-155 Adjudicative proceedings—Dispositive prehearing motions. Unless controlled by WAC 391-08-180, 391-25-170, 391-25-190, 391-45-070, 391-45-210, or 391-45-250, all prehearing motions must be made in writing and filed and served on all parties of record in accordance with WAC 391-08-120.

(1) When a hearing date(s) has not been established, dispositive prehearing motions may be filed at any time after the answer has been filed. The presiding officer shall establish a schedule for any non-moving party to respond to the motion and for the moving party to file a brief in reply to the response(s).

(2) If a hearing date(s) has been established, all dispositive prehearing motions must be filed with the presiding officer at least 65 days before the first hearing date, unless the presiding officer deems the time frame waivable for good cause shown.

(a) When a dispositive prehearing motion is filed, any nonmoving party may file and serve a response to the motion within 21 days from the date on which the motion was filed.

(b) When a response to the dispositive prehearing motion is filed, the moving party may file and serve a reply to the response within seven days from the date on which the response was filed.

(c) The presiding officer must rule on or respond to the motion at least 21 days before the first hearing date.

(3) All motions must state the relief sought, the specific basis for the request, and the supporting legal authorities. Motions may be accompanied by other supporting materials, such as affidavits.

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AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-180 Continuances. (1) Postponements, continuances, extensions of time, and adjournments may be ordered (~~by the presiding officer on his or her~~) on the presiding officer's own motion or may be granted on the 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~~) must 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 or request written submissions to receive argument and to rule on the request.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-180, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-180, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 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. WSR 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.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

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~~) Under the authority delegated to the agency by RCW 34.05.446(2), (~~other forms of~~) prehearing discovery (~~shall not be~~) is not 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. WSR 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. WSR 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. WSR 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.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-310 Subpoenas—Form—Issuance to parties. The power of subpoena is limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.

(1) Every subpoena (~~shall~~) must:

(a) State the name of the agency as (~~the~~) 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~~) that person's control at the time and place set for the hearing (~~, except no subpoena shall~~). No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, (~~any~~) a member of the commission or (~~any member of the~~) agency staff in any proceeding before the agency.

(3) Upon a showing of general relevance and reasonable scope of the testimony or evidence sought, subpoenas may be issued by the commission or (~~its~~) a 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 general 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~~) 18 years of age (~~7~~) by exhibiting and reading it to the witness, (~~or~~) by giving (~~him or her~~) the witness a copy of the subpoena, or by leaving a copy of the subpoena at (~~the place of his or her~~) the witness's abode or usual dwelling place. When service is made by any person other than an officer authorized to serve process, proof of service (~~shall~~) must be made by affidavit or declaration under penalty of perjury.

(6) The party (~~which~~) that 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~~) must be at the rates and terms allowed by the superior court for (~~Thurston County~~) the county the witness is in when the hearing occurs.

(b) Witnesses (~~(shall be)~~) are 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)~~) may 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. WSR 00-14-048, § 391-08-310, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-08-310, filed 7/1/99, effective 8/1/99; WSR 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. WSR 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. WSR 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.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-315 Interpreters. (1) For all adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, and 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)~~) must be paid by the party (~~(which)~~) that 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. WSR 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. WSR 90-06-070, § 391-08-315, filed 3/7/90, effective 4/7/90.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

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

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

(a) At the top of the page ~~((shall))~~ must 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))~~ must set out, in numbered paragraphs:

(i) The name, email address, and mailing address of the petitioner and ~~((the name and address, if any,))~~ of the petitioner's representative ~~((appearing on behalf of the petitioner.)), if any;~~

(ii) The name(s), email address(es), and mailing address(es) of any other party ~~((which))~~ that the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s), email address(es), and mailing address(es) of ~~((their))~~ those parties' representatives, if known ~~((τ));~~

(iii) The rule(s), order(s), or statute(s) from which the controversy arises ~~((τ));~~

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

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

(vi) The relief requested by the petitioner ~~((τ));~~ and

(vii) The reasons on which the petitioner relies to show that ~~((τ))~~ 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))~~ must be filed ~~((at the commission's Olympia office))~~ and served 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))~~ 15 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 ~~((τ))~~ and may give notice to any other person ~~((he or she))~~ the executive director or designee deems desirable. The notice ~~((shall))~~ must 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))~~ must be forwarded to the commission for consideration. The commission ~~((shall))~~ may 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))~~ 30 days after receipt of the petition, do one of the following:

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

(b) Set a reasonable time and place for a hearing to be held within ~~((ninety))~~ 90 days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission ~~((7))~~ 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))~~ under 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))~~ 90 days after receipt of the petition ~~((by which))~~ when 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))~~ which may include 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))~~ that action.

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

~~((10) In the event a declaratory order is filed involving the application of the provisions of chapter 47.64 RCW, the marine employees' commission shall act in place of the commission))~~ is a final agency order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-520, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240. WSR 98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

WAC 391-08-610 Agency decisions—Service. Every final order issued by the agency (~~shall~~) must be served on each party or upon the agency designated by the party or by law to receive service of (~~such papers~~) documents; and a copy (~~shall~~) must 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. WSR 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. WSR 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.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-640 (~~Adjudicative proceedings—Appeals.~~) Amicus briefs—Commission review. (~~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) ~~For cases decided under chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.~~

(3) ~~(1)~~ (1) The commission will only consider amicus (~~friend of the forum~~) briefs filed in conformity with this subsection.

(a) The person or organization desiring to file an amicus brief must:

- (i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;
- (ii) Limit any amicus brief to particular issues on appeal;
- (iii) Limit any legal analysis to arguments that differ from those advanced by the parties;
- (iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;
- (v) Limit any amicus brief to ~~((twenty-five))~~ 25 pages in total length (double-spaced, 12-point type); and
- (vi) File the amicus brief with the commission within ~~((fourteen))~~ 14 days following the filing and service of the parties' briefs ~~((of the parties,))~~ and serve copies of ~~((any such))~~ the amicus brief on each of the original parties ~~((in))~~ to the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for ~~((such))~~ an extension.

(c) The original parties to the case may, within ~~((fourteen))~~ 14 days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not ~~((thereby acquire))~~ have any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not ~~((thereby))~~ become a party to the case for purposes of any further proceedings or appeal.

~~((4))~~ (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))~~ 30 days following the issuance of the order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-08-640, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-640, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.464. WSR 98-14-112, § 391-08-640, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 16-19-058, filed 9/19/16, effective 10/20/16)

WAC 391-08-650 Case docketing and numbering. The agency maintains a ~~((computerized))~~ case docketing and numbering system ~~((which is used to))~~ that tracks and manages all requests for ~~((the))~~ dispute resolution services ~~((provided by the agency))~~.

(1) Each case ~~((processed by the agency is identified by))~~ is assigned an alphanumeric identifier that includes a unique sequential number ~~((consisting of three 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.~~

~~"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 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), an alphabetic letter signifying the type of dispute being processed, and a number indicating the calendar year in which the case was filed.~~

(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, 41.56.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-19-058, § 391-08-650, filed 9/19/16, effective 10/20/16. Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-650, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.220. WSR 96-07-105, § 391-08-650, filed 3/20/96, effective 4/20/96.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

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 or four components, as follows:

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

(b) The second component (where appropriate) ~~((consisting of an alphabetic code in ascending))~~ is a letter in consecutive alphabetical order ~~((,))~~ and 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,))~~ is a group of four alphabetical letters that indicates the statute under which the decision was issued:

"CCOL" ~~((indicates cases decided under))~~ - Chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges).

"EDUC" ~~((indicates cases decided under))~~ - Chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" ~~((indicates cases decided under))~~ - Chapter 41.76 RCW ((faculty at public four-year institutions of higher education)) (Public Four-Year Institutions of Higher Education—Faculty Labor Relations).

"MRNE" ~~((indicates cases decided under))~~ - Chapter 47.64 RCW ((relating to the Washington state ferries system)) (Marine Employees—Public Employment Relations).

"PECB" ~~((indicates cases decided under))~~ - Chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" ~~((indicates cases decided exclusively under))~~ - Chapter 53.18 RCW (Employment Relations—Collective Bargaining and Arbitration), relating to port districts.

"PRIV" ~~((indicates cases decided under))~~ - Chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" ~~((indicates cases decided under RCW 41.06.340 and/or))~~ - Chapter 41.80 RCW (Personnel System Reform Act).

(d) The fourth component is the year in which the decision was issued.

(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))~~ must conform to the formats specified in this section:

GENERAL RULE: Citations ~~((shall))~~ must 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))~~ parentheses).

Examples: *City of Roe*, Decision 12345 (PECB, ~~((1992))~~ 2022)
City of Roe, Decision 12345-A (PECB, ~~((1993))~~ 2022)
City of Roe, Decision 12345-B (PECB, ~~((1994))~~ 2022)

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

Example: *City of Roe (Doe Union)*, Decision 23456 (PECB, ~~((1995))~~ 2022)

(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))~~ To satisfy the requirements of RCW ~~((42.17.260(5)))~~ 42.56.070(5), the agency publishes its decisions, together with a search engine, on its website at ~~((:"))~~ www.perc.wa.gov(").

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-670, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 34.05.220. WSR 03-11-029, § 391-08-670, filed 5/15/03, effective 6/15/03; WSR 03-03-064, § 391-08-670, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. WSR 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; WSR 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|--|
| WAC 391-08-190 | Prefiling of collective bargaining agreements. |
| WAC 391-08-630 | Agency structure—Substitution for executive director. |
| WAC 391-08-800 | Agency records—Public records officer—Contact information. |
| WAC 391-08-810 | Agency records—Confidentiality. |
| WAC 391-08-820 | Agency offices. |
| WAC 391-08-830 | Agency records—Availability—Organization—Requests. |
| WAC 391-08-840 | Processing of public records requests. |
| WAC 391-08-850 | Processing of public records—Electronic records. |
| WAC 391-08-860 | Exemptions to public records. |
| WAC 391-08-870 | Costs for providing public records. |
| WAC 391-08-880 | Review of denial of public records. |

OTS-3724.1

Chapter 391-15 WAC PUBLIC RECORDS REQUESTS—PUBLIC EMPLOYMENT RELATIONS COMMISSION

NEW SECTION

WAC 391-15-001 Scope—Contents—Other rules. This chapter governs public records requests submitted to the agency and establishes its procedures to provide full access to its public records under the Public Records Act, chapter 42.56 RCW.

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NEW SECTION

WAC 391-15-010 Agency records—Public records officer—Contact information. (1) Any person wishing to request access to public records of the agency or seeking assistance in making that request should contact the agency's public records officer:

Public Records Officer
Public Employment Relations Commission
P.O. Box 40919
Olympia, Washington 98504-0919
360-570-7300
info@perc.wa.gov

Information is also available on the agency's website at www.perc.wa.gov.

(2) The public records officer will oversee compliance with the act but another staff member may process the request. Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

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NEW SECTION

WAC 391-15-020 Agency records—Confidentiality. The agency shall preserve the confidentiality of certain records, as follows:

(1) To protect the privacy of individual employees, the agency shall not disclose evidence furnished as a showing of interest in support of a representation petition or motion for intervention.

(2) To respect the confidential nature of mediation, the agency shall not disclose notes and memoranda made by any member of the commission or agency staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

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NEW SECTION

WAC 391-15-030 Agency offices. (1) The agency maintains its principal office in Olympia, Washington.

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

112 Henry Street N.E., Suite 300
Olympia, Washington 98506-4470.

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

P.O. Box 40919
Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

9757 N.E. Juanita Drive, Suite 201
Kirkland, Washington 98034.

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NEW SECTION

WAC 391-15-040 Agency records—Availability—Organization—Requests. (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the agency's Olympia office.

(2) **Organization of records.** The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor may not take agency records from its offices without the permission of the public records officer or designee. A variety of records are available on the agency website at www.perc.wa.gov. Requestors are encouraged to view the documents available on the website before submitting a records request.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or copy the agency's public records should make the request by email to info@perc.wa.gov, by letter, or by submitting the request in person at the agency's Olympia office addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Email address, mailing address, and telephone number of the requestor;

(iii) Identification of the public records adequate for the public records officer or designee to locate the records; and

(iv) The date and time of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, the requestor should so indicate and make arrangements to pay for copies of the records or make a deposit.

(c) The public records officer or designee may accept oral requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts an oral request, the records officer will confirm receipt of the information and the substance of the request in writing.

(d) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

[]

NEW SECTION

WAC 391-15-050 Processing of public records requests. (1) **Providing "fullest assistance."** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(a) Upon receipt of a request, the agency will assign it a tracking number and enter it into a log.

(b) The public records officer or designee will evaluate the request according to the nature of the request, the volume of requested records, and the availability of the requested records.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying by:

(i) If copies are available on the agency's website, providing a link to the website where the requested records are located;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, sending the copies to the requestor;

(b) Provide a reasonable estimate of when records will be available (the public records officer or designee may revise the estimate of when records will be available);

(c) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor.

(i) Clarification may be requested and provided by telephone and memorialized in writing;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the agency need not respond to it. The agency will respond to those portions of a request that are clear.

(d) Deny the request.

(3) **Protecting rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, before providing the records, give notice to any persons whose rights may be affected by the disclosure. That notice should be given so as to make it possible for those other persons to contact the requestor and ask the requestor to revise the request or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure but the remainder is not exempt, the public records officer will redact the ex-

empt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record were redacted.

(5) **Inspection of records.**

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. A member of the public may not remove a document from the viewing area without permission or disassemble or alter any document. The requestor may indicate which documents the requestor would like the agency to copy.

(b) The requestor must claim or review the assembled records within 30 days of the agency's notification that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and ask the requestor to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the 30-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(7) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if the public records officer or designee reasonably determine that it would be practical to provide the records in that manner. If, within 30 days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the agency has closed the request.

(10) **Later-discovered documents.** If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

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NEW SECTION

WAC 391-15-060 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of those records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) **Customized electronic access services.** With the consent of the requestor, the agency may provide customized access services and assess charges under RCW 42.56.120 (2)(f). A customized service charge applies only if the agency estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The agency may charge a fee consistent with RCW 42.56.120 (2)(f) for such customized access.

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NEW SECTION

WAC 391-15-070 Exemptions to public records. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure.

(2) The agency is prohibited by statute from disclosing lists of individuals for commercial purposes.

[]

NEW SECTION

WAC 391-15-080 Costs of providing copies of public records. (1) **Inspection.** There is no fee for inspecting public records, including records on the agency website at www.perc.wa.gov.

(2) **Costs.** A requestor may obtain standard copies for 15 cents per page.

(3) **Processing payments.** Before beginning to make the copies or processing a customized service, the public records officer or designee may require a deposit of up to 10 percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The agency will not charge sales tax when it makes copies of public records.

(4) **Electronic records.** There is no charge for emailing electronic records to a requestor, unless another cost applies.

(5) **Costs of mailing.** The agency may also charge actual costs of mailing, including the cost of the shipping container.

(6) Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

[]

NEW SECTION

WAC 391-15-090 Review of denial of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition must include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and either affirm or reverse the denial within two business days, or a mutually agreed time, following the agency's receipt of the petition.

(3) **Review by the attorney general's office.** Under RCW 42.56.530, if the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of the request regardless of any internal administrative appeal.

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OTS-3725.1

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-25-001 ~~Scope—Contents—Other rules.~~ This chapter governs representation proceedings (~~before the public employment relations commission on petitions for investigation of questions concerning representation of employees~~) under all chapters of the Revised Code of Washington (RCW) administered by the (~~commission~~). 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 391-25-070 and 391-25-090;~~

~~(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 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, and 391-25-670; and~~

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

~~(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 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(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)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-001, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-010 Representation petition ((for investigation of a question concerning representation of employees))—Who may file. A representation petition ((for investigation of a question concerning representation of employees)) may be filed by any employee, group of employees, employee organization, employer, or their agents.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-010, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-030 Petition—Time for filing. (1) ~~((A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.~~

~~(a)) A petition may be filed at any time during which no "contract bar" or "certification bar" exists.~~

(2) (a) If a valid collective bargaining agreement is in effect, it operates as a "contract bar" to a petition, and a representation petition may only be filed during the statutory window period.

(i) For state civil service employees who collectively bargain under chapter 41.80 RCW and marine employees who collectively bargain under chapter 47.64 RCW, the statutory window period is not more than 120 days nor less than 90 days before the stated expiration date of the collective bargaining agreement.

(ii) For all other employees, the statutory window period is not more than 90 days nor less than 60 days before the stated expiration date of the collective bargaining agreement.

(b) To constitute a valid collective bargaining agreement for purposes of this subsection:

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, ~~((and))~~ signed by the parties' representatives, and in effect; and

(iii) The agreement must contain a fixed expiration date not less than ~~((ninety))~~ 90 days after it was signed ~~((; and~~

~~(iv) The agreement will only operate as a bar for the first three years after its effective date).~~

~~((b))~~ (c) An agreement to extend or replace a collective bargaining agreement ~~((shall))~~ does not bar a petition filed in the ~~((the))~~ window ~~((the))~~ period of the previous agreement.

~~((c))~~ (d) Following the close of the window period described in this subsection, a "protected" period is in effect ~~((during the sixty days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative))~~ until the expiration of the existing collective bargaining agreement.

(i) If the employer and incumbent exclusive bargaining representative negotiate a valid collective bargaining agreement during ~~((that))~~ the protected period, a contract bar will be in effect and bar a petition under this chapter.

(ii) If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative ~~((shall be))~~ are given a ~~((sixty-day))~~ 60-day protected period commencing on the date the withdrawal or dismissal is final.

~~((d))~~ (e) A certification of issues for interest arbitration issued under WAC 391-55-200 serves as a valid agreement under subsection ~~((1-a))~~ (2) (b) of this ~~((rule))~~ section.

~~((2))~~ (f) For certificated employees who collectively bargain under chapter 41.59 RCW and four-year institution of higher education faculty who collectively bargain under chapter 41.76 RCW, the agree-

ment only operates as a bar for the first three years after its effective date.

(3) A "certification bar" exists where a certification has been issued by the agency(~~(, so that)~~). A petition involving the same bargaining unit or any subdivision of that bargaining unit will (~~(only)~~) be timely only if it is filed(~~(+~~

~~(a)) more than ((twelve)) 12 months following the date of the certification of an exclusive bargaining representative((; or~~

~~(b) More 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 a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time).~~

(4) Neither a certification bar nor a contract bar (~~(in an underlying existing bargaining unit will))~~ precludes petitions filed under WAC (~~(391-25-440))~~ 391-25-080 from being processed at any time subject to the limitations stated in that rule.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-030, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-030, filed 6/22/01, effective 8/1/01. 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. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-050 Petition (~~(in writing Number of copies)~~)—Filing(~~(—)~~) and service. (~~(Each)~~) A representation petition (~~(for investigation of a question concerning representation shall be)~~) may be filed through the agency's online e-filing system, by email, or in writing(~~(, and shall be filed at)~~) to the (~~(commission's)~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The party filing the petition shall serve a copy of the petition (excluding any showing of interest) 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).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-050, filed 6/22/01, effective 8/1/01. 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. WSR 00-14-048, § 391-25-050, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-050, filed 7/1/98, effective 8/1/98;

WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-070 Contents of petition filing forms. Each (~~petition for investigation of a question concerning representation shall contain, in separate numbered paragraphs~~) completed representation petition filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

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

(a) The name, email address, mailing address, and telephone number of the employer (~~, and the name, address, telephone number, fax number, and email address of its principal~~) and of the employer's representative.

~~((2))~~ (b) The name, email address, mailing address, and telephone number (~~, fax number, and email address~~) of the petitioner (~~, and the name, address, telephone number, fax number, and email address of its principal~~) and of the petitioner's representative.

~~((3))~~ (c) The name, email address, mailing address, and telephone number of any organization (~~which~~) that currently represents the employees involved and (~~the name, address, telephone number, fax number, and email address~~) of its principal representative.

~~((4) An indication that:~~

~~(a) There has never been a collective bargaining agreement))~~ (2) Information concerning the parties' relationships, including:

(a) The employer department or division involved;

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

(i) The parties have never had a contract covering the employees involved; or

~~((b))~~ (ii) The parties have had a contract, and a copy of the current ((+) or most recent ((+)) collective bargaining agreement is attached.

~~((5) Identification of:~~

~~(a) The employer's principal business;~~

~~(b) The employer department or division involved;~~

~~(e))~~ (3) A description of the proposed or existing bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions ((+) and ((+)) the number of employees in the proposed or existing bargaining unit;

(4) A statement consenting to the public employment relations commission's jurisdiction over the public employer and petitioner; and

(5) The existence of any unfair labor practice complaints involving the petitioned-for employees.

(6) A statement that:

(a) The petitioner claims to represent a majority of the employees involved ((+) and requests certification as exclusive bargaining representative of the bargaining unit; ((+))

(b) The employees in the bargaining unit desire to change their exclusive bargaining representative(~~(r)~~) and to designate the petitioner as their exclusive bargaining representative; or

(c) The employees in the bargaining unit no longer desire to be represented by any employee organization(~~(r)~~ or

~~(d) The employer has been presented with one or more demands for recognition, and requests a determination by the commission; or~~

~~(e) The employer has a good faith belief that a majority of employees no longer desire representation by the incumbent exclusive bargaining representative).~~

(7) Any other relevant facts.

(8) The name, signature, and(~~(r)~~ if any,~~r~~) title, if any, of the (~~petitioner or its representative, and~~) person filing the petition as well as the date of the signature.

(9) Any other information requested in the representation petition filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-070, filed 6/22/01, effective 8/1/01. 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. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-070, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-080 Election for inclusion of unrepresented employees. (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit that it already represents, the organization may petition for a self-determination election to ascertain the employees' desire to be included in the existing bargaining unit.

(2) To invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least 30 percent of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under WAC 391-25-070 that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that it seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the applicable statute.

(i) If the propriety of the proposed resulting unit is disputed, the executive director or designee shall make a determination following a hearing.

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or designee shall determine whether the proposed unit is, on its face, an appropriate unit under the applicable statute.

(3) Any notice to employees required to be posted must affirmatively indicate that the petitioning organization seeks to include the petitioned-for employees in an existing bargaining unit of employees represented by that organization through a self-determination election.

(4) If the resulting bargaining unit is determined to be appropriate, the agency shall conduct a self-determination election or card check to ascertain whether the petitioned-for employees desire to become part of the existing unit.

(a) Only the petitioned-for employees are eligible to vote in a self-determination election.

(b) Card check procedures under WAC 391-25-400 apply to this section.

(c) In a self-determination election, if a majority of the eligible employees voting in the election vote for inclusion, they are deemed to have indicated their desire both to become part of the existing unit and to be represented by the petitioner. If a majority of the eligible employees vote against inclusion in the existing unit, they are considered to have indicated a desire to remain unrepresented.

(5) (a) If another organization seeks to intervene in a proceeding filed under this section, it must demonstrate both:

(i) That it has the support of at least 30 percent of the employees subject to the original petition; and

(ii) That if the same group of employees were added to an appropriate unit that it already represents, the resulting unit would be an appropriate unit.

(b) If either (a) (i) or (ii) of this subsection are not established, the request for intervention will be denied and the petition processed in accordance with this section.

(c) If the requirement of both (a) (i) and (ii) of this subsection are met, the election must be for representation by the petitioner as part of the larger unit proposed by the petitioner, representation by the intervenor as part of the larger unit proposed by the intervenor, or no representation.

(6) If a competing employee organization files a representation petition for a stand-alone bargaining unit consisting of the same employees sought by the petitioner under this rule and the petitioned-for bargaining unit is appropriate under the applicable statute, then the self-determination petition will be dismissed.

(7) The existence of a valid collective bargaining agreement does not preclude the processing of a petition filed under this rule.

(8) Petitions filed under this rule do not raise a question concerning representation for the existing appropriate bargaining unit.

(a) The issuance of a certification for the existing appropriate bargaining unit within the previous 12 months does not bar the filing and processing of a petition under this rule.

(b) An amended certification issued under this rule does not affect the certification bar of the existing unit, nor does it create a new certification bar as described in WAC 391-25-030(3).

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-090 Petition filed by employer. (1) ~~((Where))~~ If 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 by filing a petition under WAC 391-25-070. ~~((Instead of a showing of interest under WAC 391-25-110,))~~ The employer shall attach copies of any written demand(s) for recognition or other correspondence pertaining to the claimed question concerning representation.

(2) ~~((Where))~~ If an employer disputes the majority status of the incumbent exclusive bargaining representative of its employees, it ~~((shall))~~ may obtain a determination of the question concerning representation by filing a petition under WAC 391-25-070.

(a) ~~((Instead of a showing of interest under WAC 391-25-110,))~~ The employer shall attach affidavits and any other documentation ~~((as may be))~~ available to it to demonstrate the existence of 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.

(b) ~~((Unsolicited signature documents provided to the employer by employees and filed by the employer in support of a petition under this subsection must be in a form which would qualify under WAC 391-25-110 if filed by the employees directly with the commission, and shall be treated as confidential under WAC 391-25-110.))~~ Any evidence submitted by employees to the employer must be in a form consistent with WAC 391-25-110 and must not be disclosed by the agency consistent with WAC 391-25-110(4).

(3) A petition under this section ~~((shall))~~ may be filed ~~((at the commission's))~~ by email or in writing to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The employer shall serve a copy of the petition (excluding any showing of interest) 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, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-090, filed 6/22/01, effective 8/1/01. 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. WSR 00-14-048, § 391-25-090, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-090, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-110 Supporting evidence—Showing of interest confidential. (1) A petition filed by employees or an employee organization (~~shall~~) must be accompanied by a showing of interest indicating that the petitioner has the support of (~~thirty~~) at least 30 percent (~~or more~~) of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest (~~shall~~) must be (~~furnished~~) filed under the same timeliness standards applicable to the petition (~~r~~) and (~~shall~~) consist of original or legible paper or electronic copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Authorization cards or letters (~~shall not be~~) are not valid unless signed and dated during the one-year period preceding the filing of the petition. The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

(a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;

(b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

(c) A statement that the showing of interest may be used for purposes of a card check election;

(d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

(e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of card check.

(2) The agency shall notify the petitioner of the existence and number of any revocations filed under subsection (1)(e) of this section before the commencement of the card check but shall not disclose the identities of the employees involved.

(3) For any bargaining unit affected by RCW 74.39A.270 and 74.39A.300, the showing of interest requirement described in subsection (1) of this section is 10 percent for either a petitioner or an intervenor.

~~((2))~~ (4) The agency shall not disclose the identities of employees whose authorization cards or letters are (~~furnished to~~) filed with the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) 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.

(c) (~~In order~~) To preserve the confidentiality of the showing of interest and the right of employees to freely (~~to~~) express their views on the selection of a bargaining representative, the agency shall not honor any attempt by an employee to withdraw any authorization submitted for purposes of this section.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-110, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-110, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 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. WSR 81-02-034 (Order 81-01), § 391-25-110, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-130 List of employees. (~~(Within ten days following a request by the agency)~~) (1) Unless otherwise specified by the executive director or designee, the employer shall submit to the agency and the petitioner a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition within 10 days following a request by the agency. ((Following administrative determination that the petition is supported by a sufficient showing of interest, the agency shall furnish a copy of the list of names and addresses to the petitioner. Following)) After granting ((of)) a motion for intervention, the agency shall ((furnish)) provide a copy of the list of names and addresses to the intervenor.

(2) In addition to the information required by subsection (1) of this section, an employer of symphony musicians who are seeking to be represented for the purposes of collective bargaining must, upon request, provide the executive director with financial information that establishes the agency's jurisdiction over the employer.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-130, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-140 Notice to employees—Limitations on employer actions. (1)(a) The employer shall ~~((post))~~ provide to the petitioned-for employees a copy of the petition and a notice ~~((, in the form specified))~~ created by the ~~((commission,))~~ agency to inform employees

of the existence of proceedings under this chapter. The ~~((agency shall furnish the employer with copies of the petition and notice, and the))~~ employer shall also post ~~((them))~~ the notice in conspicuous places on its premises where notices to affected employees are usually posted. The ~~((petition and))~~ notice ~~((shall))~~ must remain posted until a ~~((certification or interim certification))~~ direction of election or order of dismissal is issued in the proceeding.

(b) The posting requirement in this subsection does not apply to the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(2) 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))~~ agency under this chapter.

(3) The employer ~~((shall))~~ may not express or otherwise indicate any preference between competing organizations ~~((, where))~~ if two or more employee organizations are seeking to represent its employees.

(4) ~~((Where))~~ If a petition filed under this chapter involves employees who are represented for the purposes of collective bargaining, the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition. The employer and incumbent union may proceed with negotiations covering employees not affected by the petition ~~((,))~~ and shall resume negotiations on a successor agreement covering the affected employees after the question concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

~~(5) ((When an order of dismissal issued under WAC 391-25-390 (1)(a) is served upon the parties, the obligations to maintain the status quo under subsection (2) of this section and suspend negotiations with the incumbent exclusive bargaining representative under subsection (4) of this section are lifted.~~

~~(a) If a party to the proceeding files a timely notice of appeal of the order of dismissal, then the obligations under subsections (2) and (4) of this section shall be reinstated once the parties to the proceeding are served the notice of appeal. Those obligations shall remain in effect until a final order is issued by the commission under WAC 391-25-670, unless governed by (b) of this subsection.~~

~~(b) Where a timely filed notice of appeal reinstates the obligation to maintain the status quo or suspend bargaining,) An order dismissing a representation petition lifts the obligations under subsections (2) and (4) of this section. Those obligations are reinstated upon the filing and service of a notice of appeal.~~

(6) Any party to the proceeding may petition the commission to stay ((either of those)) the obligations ((where)) under subsections (2) and (4) of this section if the petitioning party demonstrates a need for a change in terms and conditions of employment due to circumstances that are beyond that party's control ~~((,))~~ or ~~((where))~~ if the failure to resume bargaining would substantially harm the petitioned-for employees and leave ~~((them))~~ the parties without an adequate administrative remedy. A petition filed under this subsection ~~((shall))~~ must be accompanied by affidavits and evidence.

~~((e))~~ (a) Following the receipt of a petition under ~~((b) of))~~ this subsection, the due date for any counter-affidavits from other parties is seven days following the date on which that party is served with the petition.

~~((d))~~ (b) The executive director shall forward all petitions and affidavits to the commission, ~~((who))~~ which shall determine whether to stay the obligations under subsections (2) and (4) of this section at the next regularly scheduled commission meeting.

~~((e))~~ (c) If the commission uses its authority under ~~((b) or (f))~~ this subsection, any party seeking review of the commission's decision ~~((shall))~~ may seek relief through the courts.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-140, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.050. WSR 01-14-009, § 391-25-140, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 88-12-054 (Order 88-02), § 391-25-140, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-150 Amendment and withdrawal. A petition may be amended or withdrawn by the petitioner at any time ~~((prior to))~~ before the issuance of a notice of election and the mailing of the ballots~~((r))~~ or under ~~((such))~~ any conditions ~~((as))~~ the executive director or the commission may impose.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-150, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-150, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

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,))~~ must automatically be allowed to intervene in the proceedings without motion and ~~((, upon granting of its motion for intervention, shall be))~~ is 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. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

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.~~) if:

(a) The motion for intervention ((shall be)) is supported by a showing of interest indicating that the intervenor has the support of ((ten)) at least 10 percent ((or more)) of the employees in the bargaining unit which the original petitioner claims to be appropriate ((- A showing of interest filed in support of a motion for intervention shall be subject to the requirements and confidentiality protections of WAC 391-25-110. 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.)) ; or

(b) The organization seeking intervention demonstrates, through affidavits or other documentary evidence, that the petitioned-for employees only share a community of interest with a bargaining unit it represents and demonstrates that it has filed a unit clarification petition under chapter 391-35 WAC.

(2) No motion for intervention ((shall)) may 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 has been issued and a notice of election or card check has been posted.~~

[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. WSR 01-14-009, § 391-25-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-190, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 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. WSR 81-02-034 (Order 81-01), § 391-25-190, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-210 Bargaining unit configurations—New organizing.

~~((1) In proceedings on a petition for "decertification" under WAC 391-25-070 (6)(c) or 391-25-090(2), the parties shall not be permitted to remove positions from or add positions to the existing bargaining unit;~~

~~(2) An organization which files a motion for intervention under WAC 391-25-190 shall not be permitted to seek a bargaining unit configuration different than proposed by the original petitioner.~~

~~(3) If petitions filed by two or more organizations under this chapter are pending before the agency at the same time and involve any or all of the same employees, the timeliness of the respective petitions and the sufficiency of the respective showings of interest shall be determined separately and the proceedings shall be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s). A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a cross-check in another proceeding under WAC 391-25-410 shall be dismissed as untimely.~~

~~(4) A party to proceedings under this chapter shall not be permitted to propose more than one bargaining unit configuration for the same employee or employees, except where a merger of bargaining units is proposed under WAC 391-25-420.~~

~~(5) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.)~~ (1) A party to proceedings under this chapter may not propose more than one bargaining unit configuration for the same employee(s).

(2) If new organizing petitions filed by two or more organizations are pending at the same time and involve any or all of the same employees, the following process applies:

(a) The timeliness and the sufficiency of the respective showings of interest of each petition must be determined separately;

(b) If multiple petitions are timely and properly supported by the appropriate showing of interest, then the proceedings for each valid petition must be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s) and eligibility list(s).

(3) A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a card check in another proceeding under WAC 391-25-400 must be dismissed as untimely.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-210, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.070, 41.59.070, and 41.80.080. WSR 03-11-029, § 391-25-210, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-210, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-210, filed 7/1/98, effective 8/1/98; WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-210, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-215 Bargaining unit configurations—Decertification, change of representation, and severance petitions. (1) A petition to "decertify" under WAC 391-25-070 (6) (c) or 391-25-090(2) may not alter the existing bargaining unit configuration during the representation proceeding;

(2) If an organization files a motion for intervention under WAC 391-25-190 in a decertification proceeding, the intervening organization may not seek a bargaining unit configuration different from the existing bargaining unit configuration.

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

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)) If a representation petition is properly supported under WAC 391-25-110, an investigation conference may be held to determine:~~

~~(a) The jurisdiction of the ~~((commission))~~ agency;~~

~~((iii)) (b) The qualification of the petitioner and any intervenor(s) for certification as exclusive bargaining representative;~~

~~((iv) The existence of a question concerning representation;~~

~~(v)) (c) The timeliness of the petition;~~

~~((vi)) (d) The existence of blocking charges under WAC 391-25-370;~~

~~((vii)) (e) The propriety of the petitioned-for bargaining unit; and~~

~~((viii)) (f) The list of employees eligible to vote or be considered in determining a question concerning representation((r)) and the 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.)~~.

~~((e))~~ (2) The parties are encouraged to reach binding stipulations on all issues during the course of the investigation conference.

~~((2))~~ (3) 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.~~

~~(b) An investigation statement shall be)~~ by the executive director or designee and are binding on the parties unless written objections are filed and served as required by WAC 391-08-120 within ~~((ten))~~ 10 days following issuance of the statement.

~~((3))~~ (4) When it appears that all conditions precedent to an election or ~~((cross-check))~~ card check are met, the executive director or designee shall ~~((determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute. The agency 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 or cross-check agreements under this chapter)~~ proceed with the election or card check.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431. WSR 01-14-009, § 391-25-220, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-220, filed 7/1/98, effective 8/1/98; WSR 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. WSR 90-06-072, § 391-25-220, filed 3/7/90, effective 4/7/90.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-270 Interim certification—Supplemental proceedings.

Where the matters at issue in a proceeding under this chapter are limited to the eligibility of particular individuals or classifications for inclusion in the bargaining unit, the executive director or designee may expedite the ~~((determination of the question concerning representation))~~ proceedings while reserving the eligibility issues for subsequent determination.

(1) The agency ~~((shall))~~ will conduct an election or ~~((cross-check))~~ card check, as ~~((may be))~~ appropriate.

(a) The individuals whose eligibility is disputed ~~((shall be))~~ are permitted to vote by challenged ballot in an election.

(b) The individuals whose eligibility is disputed ~~((shall))~~ will be listed as challenged in a ~~((cross-check))~~ card check, and any au-

thorizations signed by those individuals (~~(shall)~~) must not be tallied.

(2) After a tally is issued under WAC 391-25-550:

(a) If the number of challenges (~~(are sufficient in number to)~~) would affect the outcome, they (~~(shall)~~) will be determined under subsection (3) of this section (~~(, prior to)~~) before the issuance of a certification.

(b) If (~~(an organization is entitled to certification regardless of the reserved eligibility issues, a)~~) the number of challenges does not affect the outcome, an interim certification (~~(shall)~~) will be issued (~~(, but)~~) and the case (~~(shall)~~) will remain open for supplemental proceedings under subsection (3) of this section. The employer and the exclusive bargaining representative (~~(shall)~~) have the duty to bargain (~~(, under the applicable statute, after a)~~) upon issuance of an interim certification (~~(is issued)~~) under (~~(b) of)~~) this subsection.

(c) If a certification of "no representation" is appropriate regardless of the reserved eligibility issues, a final certification (~~(shall)~~) will be issued and no supplemental proceedings (~~(shall)~~) may be conducted.

(3) All eligibility issues reserved for subsequent determination under this section (~~(shall)~~) must be resolved (~~(under WAC 391-25-290, 391-25-310, 391-25-350 and 391-25-390)~~), without regard to whether the individuals cast challenged ballots.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-270, filed 6/22/01, effective 8/1/01. 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. WSR 00-14-048, § 391-25-270, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-270, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-290 Notice of hearing. If it appears to the executive director or designee that a question concerning representation may exist, a (~~(hearing officer shall issue a)~~) notice of hearing (~~(and have it)~~) will be issued and served on the parties. (~~(Attached to the notice of hearing shall be a copy of the investigation statement issued under WAC 391-25-220.)~~) 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. WSR 01-14-009, § 391-25-290, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-290, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-299 (~~(Special provision)~~) Private sector and other employees. Except for symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW, the (~~(commission)~~) agency lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. (~~(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 by stipulation of all parties to the proceeding.)~~)

[Statutory Authority: RCW 41.58.050 and 49.39.060. WSR 10-20-172, § 391-25-299, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-299, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-299, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

WAC 391-25-310 Hearings—Who (~~(shall)~~) may conduct. Hearings may be conducted by the commission, (~~(by)~~) the executive director, (~~(by)~~) or 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)~~) assigned.

[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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-350 Hearings—Reopening of hearing—Briefs. (1) Hearings (~~(shall be)~~) directed under WAC 391-25-390 are public, (~~(except where)~~) unless a protective order is issued under WAC 10-08-200(7), and (~~(shall be)~~) are limited to matters concerning the determination of a question concerning representation.

(a) The parties (~~((shall be))~~) are responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties (~~((r))~~) to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

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

(3) The hearing officer may (~~((allow or))~~) direct the filing of briefs as to any or all of the issues in a case.

(4) Arrangements and due dates for briefs (~~((shall be))~~) are established by the hearing officer.

(5) Any brief (~~((shall))~~) must be filed (~~((with the hearing officer))~~) and served 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))~~).

(~~((4))~~) (6) A party filing a brief under this section must limit (~~((its))~~) the brief's total length to (~~((twenty-five))~~) 25 pages (double-spaced, (~~((twelve-point))~~) 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~((in order))~~) to address novel or complex (~~((legal and/or factual issues raised by the objections))~~) issues; and

(b) The executive director, (~~((his or her))~~) the executive director's designee, or the hearing officer grants (~~((such a))~~) the motion for good cause shown (~~((; and))~~).

(~~((e))~~) (7) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the (~~((administrative))~~) hearing, and the hearing officer has the authority to orally grant (~~((such))~~) the motion at (~~((such))~~) that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-350, filed 1/31/08, effective 4/1/08. 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. WSR 01-14-009, § 391-25-350, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-25-350, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-350, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed. (1) The executive director may suspend the process-

ing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings (~~(, where)~~) if:

(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~~) The 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)~~) must 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 proceed (~~(under this subsection)~~), the executive director may resume the processing of the representation petition and (~~(shall)~~) must summarily dismiss any objections filed in conflict with the request to proceed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-370, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-370, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-370, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-370, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-390 Proceedings before the executive director. (1)

The executive director may proceed 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 (~~(τ)~~) 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)~~) cutoff date for eligibility to vote in an election (~~(shall be)~~) is 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)~~) a 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 (~~(τ)~~) and may only be appealed to the commission by objections under WAC 391-25-590 after the election.

(4)(a) A party seeking review by the commission of an interlocutory decision of the executive director, (~~(his or her)~~) the executive

director's designee, or a hearing officer must file a motion for discretionary review with the commission and a copy with the ~~((executive director or his or her designee))~~ person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, ~~((his or her))~~ the executive director's designee, or a hearing officer will be accepted by the commission only:

(i) If the executive director ~~((or his or her))~~, the executive director's designee, or the hearing officer has committed an obvious error ~~((which))~~ that would render further proceedings useless; ~~((or))~~

(ii) If the executive director, ~~((his or her))~~ the executive director's designee, or the hearing officer has committed probable error and the interlocutory decision ~~((of the executive director, his or her designee, or hearing officer))~~ substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, ~~((his or her))~~ the executive director's designee, or the hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for ~~((the exercise of revisory jurisdiction))~~ immediate review by the commission.

(c) A motion for discretionary review ~~((under this rule))~~, and any response, should not exceed ~~((fifteen))~~ 15 pages ~~((double spaced,))~~ (double-spaced, 12-point type) excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the ~~((executive director's, his or her designee's, or hearing officer's))~~ interlocutory decision or the issues pertaining to that decision.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-390, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-390, filed 6/22/01, effective 8/1/01. 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. WSR 98-14-112, § 391-25-390, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-390, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-400 Card check. (1) If only one organization is seeking certification as the exclusive representative of unrepresented employees and the showing of interest exceeds 50 percent of the employees subject to the petition, then the executive director or the

executive director's designee may direct a card check to determine whether the employees desire to be represented by the petitioner.

(2) Employees desiring to withdraw their showing of interest cards for purposes of the card check may do so by sending an individual card or letter signed by the employee to the executive director or the executive director's designee before the date specified in the direction of card check. The agency shall notify the petitioner of any such request before the commencement of the card check but shall not disclose the identity of the employee submitting the request.

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

(4) Before the commencement of the card check, the petitioner may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election.

(5) All card checks must be by actual comparison of records provided by the parties. The agency shall not disclose the names of employees giving representation authorization in favor of the organization. Following the comparison of records, the agency shall issue a tally sheet demonstrating the outcome of the card check.

(6) The card check procedures described in subsections (1) through (5) of this section are not applicable for certificated employees who collectively bargain under chapter 41.59 RCW, academic employees who collectively bargain under chapter 28B.52 RCW, symphony musicians who collectively bargain under chapter 49.39 RCW, and the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-420 Unit determination elections. Employees ~~((shall))~~ may not be subjected to examination or cross-examination concerning their views on the configuration of bargaining units. A unit determination election ~~((shall be))~~ is the exclusive method to determine the ~~(())~~ desire ~~(())~~ of the employees involved.

(1) ~~((Where))~~ If the executive director determines that either of two or more bargaining unit configurations proposed by petitioning or intervening organizations could be appropriate ~~((under other criteria))~~, a unit determination election ~~((shall))~~ must be conducted.

(2) ~~((Where))~~ Unless governed by RCW 41.56.050(2) or 41.80.070(3), if an organization desires to merge two or more historically separate bargaining units, it may request a unit determination election under this section.

(a) The organization shall file a petition under WAC 391-25-070, indicating under "other relevant facts" that it is seeking a merger of two or more existing bargaining units.

(b) The showing of interest ~~((shall))~~ must indicate support for the merger of units ~~((r))~~ and ~~((shall))~~ be evaluated separately in each of the historical bargaining units.

(c) The proposed merged unit must be an appropriate unit under the applicable statute.

(i) If the propriety of the merged bargaining unit is disputed, the executive director shall make a determination following a hearing.

(ii) If the propriety of the merged bargaining unit is stipulated, the executive director or designee shall determine whether the proposed unit is, on its face, an appropriate bargaining unit under the applicable statute.

(d) If the merged unit is found to be appropriate, the agency shall conduct a unit determination election in each of the bargaining units proposed for merger.

(i) If the merger is rejected in any of the historical units, the petition (~~shall~~) must be dismissed.

(ii) If the merger is approved in all of the historical units and no motion for intervention has been granted, the executive director shall issue a certification designating the petitioning organization as the exclusive bargaining representative of the merged bargaining unit.

(iii) If a motion for intervention has been granted under WAC 391-25-170 or 391-25-190, the agency shall conduct a representation election prior to the issuance of a certification.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060. WSR 01-14-009, § 391-25-420, filed 6/22/01, effective 8/1/01.]

AMENDATORY SECTION (Amending WSR 16-06-019, filed 2/22/16, effective 3/24/16)

WAC 391-25-430 Notice of election or card check. (1) When an election or card check is to be conducted, the agency shall (~~furnish the employer with appropriate notices,~~) issue a notice to the employer, and the employer shall provide to the petitioned-for employees a copy of the notice of election or card check. The employer shall also post (~~them~~) the notice in conspicuous places on its premises where notices to affected employees are usually posted. The notice (~~shall~~) must contain all of the following:

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

~~(2))~~ (a) The deadline for return of mail ballots or the date(s), hours, and polling place(s) for an on-site election (~~, or~~); the voting period for an electronic election; or the date of the card check.

(~~(3))~~ (b) The cut-off date, if any, or other criteria (~~to be applied in~~) establishing eligibility to vote in the election or card check, including that the eligible employees are limited to those who continue to be employed within the bargaining unit when they cast a ballot in an on-site election, at the deadline for return of mail ballots, (~~or~~) at the closing of polls in an electronic election, or on the date agency staff conducts the card check under WAC 391-25-400.

(~~(4))~~ (c) A statement of the purpose of the election or card check and the question to be voted upon (~~or a sample ballot~~).

(~~Notices of the election shall be posted for at least five business days prior to the date on which the polls are opened for an on-site election or electronic election or five business days prior to the date on which ballots are mailed in a mail ballot election.~~) (2) Notices of the election (~~shall~~) or card check must remain posted until a tally of ballots or card check has been issued. The requirement

that the employer post the notices of election in conspicuous places on its premises where notices to affected employees are usually posted is inapplicable to the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(3) While a notice of election is posted, employees in the bargaining unit or proposed bargaining unit have the right to conduct campaigning activities in the public areas or in the nonworking areas of the employer's premises, during nonworking time of the campaigner and employees being solicited, as long as the activities do not disrupt operations. However, if employees are permitted to discuss non-work subjects or solicit other employees in work areas, the employer cannot discriminatorily regulate employee discussions or solicitations.

(a) Nonemployees have the right to engage in campaigning activities in the employer's public areas consistent with the reasonable use of those areas. Where there are no public areas in an employer's workplace, reasonable comparable access must be granted.

(b) Employer rules and policies may expand these rights. Employer rules and policies must be nondiscriminatory.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-06-019, § 391-25-430, filed 2/22/16, effective 3/24/16. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-430, filed 1/31/08, effective 4/1/08. 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. WSR 01-14-009, § 391-25-430, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-430, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-450 Disclaimers. (~~((Prior to the issuance of))~~) Before the agency issues a notice of election and (~~((the mailing of))~~) mails the ballots, 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. The organization filing a disclaimer (~~((shall))~~) may not seek to be certified in the bargaining unit, or any subdivision thereof, for a period of at least six months.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-450, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-450, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-450, filed 7/1/98, effective 8/1/98; WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-450, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 16-06-019, filed 2/22/16, effective 3/24/16)

WAC 391-25-480 Elections—Electioneering—Objectionable conduct.

(1) The executive director (~~((shall have))~~) has discretion to conduct elections electronically, by mail, or on-site. The procedures for each means of election (~~((shall))~~) must be 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.

(2) (~~((Following the close of an electronic or telephonic election,))~~) The agency shall transmit the results of an electronic election to the parties of record.

(3) Following the close of an election by mail, each party may be represented by observers of (~~((its))~~) their own choosing at the tally of any ballots. (~~((Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.))~~)

(4) For an on-site election, each party may be represented by observers of (~~((its))~~) their own choosing, subject to (~~((such))~~) any limitations (~~((as))~~) the executive director may prescribe. During the hours of voting, no management official having authority over bargaining unit employees nor any officer or paid employee of an organization (~~((shall))~~) may serve as observer. (~~((Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.))~~)

(5) 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))~~) agency 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) Conduct in violation of WAC 391-25-140 is prohibited.

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

(iv) Be 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 that the polls are open

in an on-site or electronic election or during the period beginning on the scheduled date for a mail ballot election and continuing through the deadline for mail ballots. Other electioneering not prohibited by (a) through (f) of this subsection is permitted during that period.

(h) For on-site elections, ~~((there shall be))~~ no electioneering may occur at or ~~((about))~~ around the polling place during the hours of voting.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-06-019, § 391-25-480, filed 2/22/16, effective 3/24/16.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-510 Challenged ballots. (1) Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in ~~((the))~~ a mail ballot, on-site, or electronic election. No person ~~((shall))~~ may 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))~~ must 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))~~.

(2) Any party may withdraw a challenge previously made and, unless the eligibility of the voter is challenged by another party or ~~((by))~~ the election officer, the challenge ~~((shall be))~~ is resolved.

(3) If the challenged ballots ~~((are insufficient in number to))~~ do not affect the results of the election, they ~~((shall))~~ will be impounded ~~((and no ruling shall be made))~~ and the appropriate certification or interim certification will be issued.

(4) If the number of challenged ballots ~~((are sufficient in number to))~~ would 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))~~ executive director or the executive director's designee shall conduct proceedings under WAC 391-25-390 and rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the ex-

ecutive director or the executive director's designee as to the eligibility of the challenged voter.

[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. WSR 01-14-009, § 391-25-510, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-510, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

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) Unless governed by WAC 391-25-531, 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.)~~ (1) Except as provided in subsection (2) of this section, representation elections must be decided by a majority of those voting.

(a) If there are only two choices on the ballot, a tie vote results in a certification of no representative.

(b) If there are only two choices on the ballot and both choices are qualified employee organizations or bargaining representatives, the executive director may direct a rerun election following a tie result for good cause shown.

(2) Unit determination elections and representation elections conducted under chapter 41.56 RCW with three or more choices on the ballot must be decided by a majority of those eligible to vote in the election.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-530, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-530, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-25-550 Tally sheet. The election officer shall prepare and (~~furnish to each of the parties~~) issue a tally of the votes cast on unchallenged ballots and the number of challenged ballots. The tally must indicate whether the results of the election were conclusive or inconclusive. After the (~~subsequent~~) resolution of challenged

ballots affecting the results of the election, a revised tally ((shall)) must 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. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-550, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

WAC 391-25-570 Procedure following inconclusive election. In any election in which there are ((more than two)) three or more choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a run-off election ((shall)) must 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)) Any objections ((shall)) must be resolved ((prior to the conduct of)) before a run-off election is conducted. All run-off elections ((shall)) must 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-570, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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)) 391-25-400 or 391-25-550, regardless of whether the number of challenged ballots ((are sufficient in number to)) would affect the results of the election. The time ((period)) for filing objections cannot be extended.

(1) Objections by the petitioner, the employer, or any intervenor ((shall)) must 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))~~ or

(b) The direction of election, direction of ~~((cross-check))~~ card 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))~~ must be filed ~~((at the commission's Olympia office))~~ and served 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. WSR 00-14-048, § 391-25-590, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-590, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-590, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-610 Procedure where no objections are filed. If no objections are filed within the time set forth ~~((above, and if any))~~ in WAC 391-25-590, if the number of challenged ballots ~~((are insufficient in number to))~~ does not affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall issue a certification having 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, 41.56.080 and 41.59.090. WSR 01-14-009, § 391-25-610, filed 6/22/01, effective 8/1/01. 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-610, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-25-630 Procedure where conduct objections are filed. ~~((Where))~~ If 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))~~ must 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))~~ the matter may be remanded to the executive director to conduct further proceedings under WAC 391-25-390. ~~((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))~~ must 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. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-630, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-25-650 Briefs and written arguments on objections. (1)

The due date for any appeal brief which the party filing an objection desires to have considered by the commission ~~((shall be fourteen))~~ is 14 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 any other ~~((parties))~~ party desires to have considered by the commission ~~((shall be fourteen))~~ is 14 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))~~ to extend the due date may only be considered if made ~~((on or before))~~ by the date the brief is due ~~((7))~~ and in compliance with WAC 391-08-180. Extensions of time ~~((shall))~~ may not be routine or automatic.

(4) A party filing a brief under this section must limit ~~((its))~~ the brief's total length to ~~((twenty-five))~~ 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ~~((in order))~~ to address novel ~~((and/or))~~ or complex issues raised by the objections; and

(b) The commission or its designee grants ~~((such a))~~ the motion for good cause shown.

(5) Any motion filed under ((this)) subsection ((shall)) (4)(a) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to ((such)) the motion.

(6) Any brief or motion filed under this section must be filed and served as required by WAC 391-08-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-650, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-650, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-25-650, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-650, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-25-660 Appeals from orders and jurisdictional rulings.

An order issued under WAC ~~((391-25-390))~~ 391-25-290 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))~~ agency, may be appealed to the commission as follows:

(1) The due date for a notice of appeal ~~((shall be twenty))~~ is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) ~~((Where))~~ If an order has been appealed, the due date for a notice of cross-appeal by other parties ~~((shall be))~~ is 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))~~ must 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))~~ that desires to cite or reassert a document previously filed in the matter ~~((shall))~~ must do so by reference to the document already on file ~~((7))~~ and shall not file or attach another copy of the document to ~~((papers))~~ documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served 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))~~) that the party filing an appeal or cross-appeal desires to have considered by the commission (~~((shall be fourteen))~~) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served 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))~~) that a party desires to have considered by the commission (~~((shall be fourteen))~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served 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))~~) to extend the due date may only be considered if made (~~((on or before))~~) by the date the brief is due(~~((7))~~) and in compliance with WAC 391-08-180. Extensions of time (~~((shall))~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~((its))~~) the brief's total length to (~~((twenty-five))~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~((in order))~~) to address novel (~~((and/or))~~) or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~((such a))~~) the motion for good cause shown.

(10) Any motion filed under (~~((this))~~) subsection (~~((shall))~~) (9)(a) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~((such))~~) the motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-660, filed 1/31/08, effective 4/1/08. 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. WSR 00-14-048, § 391-25-660, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-660, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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))~~) must 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 entire record transmitted to it, determine the objections or appeal and any challenged ballots referred to the commission (~~((pur-~~

suant to) under WAC 391-25-510((~~r~~)) 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. WSR 00-14-048, § 391-25-670, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-046 (Order 80-5), § 391-25-670, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|--|
| WAC 391-25-002 | Sequence and numbering of rules—Special provisions. |
| WAC 391-25-012 | Special provision—Educational employees. |
| WAC 391-25-032 | Special provision—Educational employees. |
| WAC 391-25-034 | Special provision—Marine employees. |
| WAC 391-25-036 | Special provision—State civil service employees. |
| WAC 391-25-037 | Special provision—Higher education faculty. |
| WAC 391-25-051 | Special provision—Individual providers of home care under RCW 74.39A.270 and 74.39A.300—Family child care providers under RCW 41.56.208—Adult family home providers under RCW 41.56.029—Language access providers under RCW 41.56.510. |
| WAC 391-25-092 | Special provision—Educational employees. |
| WAC 391-25-096 | Special provision—State civil service employees. |
| WAC 391-25-136 | Special provision—State civil service employees. |
| WAC 391-25-137 | Special provision—Higher education faculty. |
| WAC 391-25-197 | Special provision—Higher education faculty. |
| WAC 391-25-217 | Special provision—Higher education faculty. |
| WAC 391-25-229 | Special provision—Symphony musicians. |
| WAC 391-25-230 | Election agreements. |

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|----------------|--|
| WAC 391-25-250 | Cross-check agreements. |
| WAC 391-25-252 | Special provision—Educational employees. |
| WAC 391-25-253 | Special provision—Academic employees. |
| WAC 391-25-391 | Special provision—Public employees. |
| WAC 391-25-396 | Special provision—State civil service employees. |
| WAC 391-25-399 | Special provision—Symphony musicians. |
| WAC 391-25-410 | Cross-check of records. |
| WAC 391-25-412 | Special provision—Educational employees. |
| WAC 391-25-413 | Special provision—Academic employees. |
| WAC 391-25-416 | Special provision—State civil service employees. |
| WAC 391-25-426 | Special provision—State civil service employees. |
| WAC 391-25-427 | Special provision—Higher education faculty. |
| WAC 391-25-436 | Special provision—State civil service employees. |
| WAC 391-25-440 | Election for inclusion of unrepresented employees. |
| WAC 391-25-486 | Special provision—State civil service employees. |
| WAC 391-25-531 | Special provision—Public employees. |
| WAC 391-25-674 | Special provision—Marine employees. |

OTS-3726.1

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-35-001 Scope—Contents—Other rules. This chapter governs unit clarification proceedings (~~((before the public employment relations commission on petitions for clarification of existing bargaining units))~~) under all chapters of the Revised Code of Washington (RCW) administered by the (~~(commission and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~ 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 391-35-050~~;

~~(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 391-35-210 and 391-35-250; and~~

~~(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-35-070.~~

~~(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 391-45 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)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-35-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-35-001, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-35-010 Unit clarification petition ((for clarification of an existing bargaining unit))—Who may file. A unit clarification petition ((for clarification of an existing bargaining unit)) may only 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. WSR 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-020 Time for filing petition—Limitations on results of proceedings.

TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) ~~Disputes ((concerning))~~ about the appropriate bargaining unit placement for newly created positions ((which have been newly created by an employer.

~~(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.)~~ ;

~~((e))~~ (b) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate((r)) ;

~~((d))~~ (c) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration((r)) ;

~~((e))~~ (d) Disputes under WAC 391-35-320 concerning status as a confidential employee((r)) ; or

~~((f))~~ (e) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A ~~((unit clarification))~~ petition concerning supervisory status ((as a supervisor)) under WAC 391-35-340 ~~((r))~~ or regular part-time status ((as a regular part-time or casual employee)) under WAC 391-35-350 ~~((r is subject to the following conditions))~~ will be considered timely if:

(a) ~~((The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.))~~ All parties agree to raise the issue;

(b) ~~((Except as provided under subsection (2) (a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.))~~ The petitioner demonstrates that it put the other party on notice during negotiation for the most recent collective bargaining agreement that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding and the petitioner files the petition before ratification of the current collective bargaining agreement; or

(c) The petitioner demonstrates through evidence that a substantial change in circumstances occurred within a reasonable time before the filing of the petition and that the change in circumstances warrants a modification of the bargaining unit by inclusion or exclusion of a position or class.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit ~~((in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the com-~~

~~community of interest of the employees or positions)) if the petition was timely filed as provided in subsections (1) and (2) of this section.~~

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding if:

(a) ~~((Where a))~~ The petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; ~~((or))~~

(b) ~~((Where))~~ The existing bargaining unit is the only appropriate unit for the employees or positions; or

(c) All parties to the proceeding agree the agency should rule upon the request for clarification.

~~(5) ((Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:~~

~~(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.~~

~~(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.~~

~~(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.)~~ An order clarifying bargaining unit will not be issued under this section if:

(a) Employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances; or

(b) Adding the disputed employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

~~(6) ((Where a petitioning union seeks severance of a portion of an existing))~~ An appropriate bargaining unit of classified employees at a school district or educational service district ~~((, appropriate bargaining units existing on July 25, 2005,))~~ may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-020, filed 1/31/08, effective 4/1/08. 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. WSR 01-14-009, § 391-35-020, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 88-12-061 (Order 88-03), § 391-35-020, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-030 Petition (~~(in writing Number of copies Filing)~~)
~~—Filing and service.~~ ((Each)) A unit clarification petition (~~(for clarification of an existing bargaining unit shall)~~) may be filed through the agency's online e-filing system, by email, or in writing (~~(, and shall be filed at)~~) to the (~~(commission's)~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the petition is not 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. WSR 01-14-009, § 391-35-030, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-030, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-050 Contents of petition filing forms. Each completed unit clarification petition (~~(for clarification of an existing bargaining unit shall contain, in separate numbered paragraphs)~~) filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

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

(a) The name, email address, mailing address, and telephone number of the employer (~~(, and the name, address, telephone number, fax number, and email address of its principal)~~) and of the employer's representative; and

(b) The name, email address, mailing address, and telephone number (~~(, fax number, and email address)~~) of the exclusive representative (~~(, and the name, address, telephone number, fax number, and email address)~~) and of its principal representative (~~(, and the name, address, telephone number, fax number, and email address)~~);

~~(c) The employer's principal business;~~

~~(d)).~~

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

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

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

(ii) The parties have had a contract, and a copy of the current (~~(+)~~) or most recent (~~(+)~~) collective bargaining agreement is attached;

(~~(e)~~) (b) 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))~~ (c) The description of the existing bargaining unit, specifying inclusions and exclusions;

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

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

~~((2))~~ (3) An explanation of the proposed change and the reasons for the proposed change, including identification of the position(s), classification(s), or group(s) at issue; the number of employees in each position, classification, or group; and the ~~((present))~~ bargaining unit ~~((inclusion or exclusion))~~ status of each position, classification, or group; ~~(, identification of the party proposing that the present status be changed, and the reason for the proposed change)~~.

~~((3))~~ (4) Identification of other interested employee organizations, including the name ~~((s and addresses)), email address, and mailing address~~ of any other employee ~~((organizations))~~ organization(s) claiming to represent any employee ~~((s))~~ affected by the proposed clarification ~~((s))~~ and a brief description ~~((s))~~ of ~~((the contracts, if any,))~~ any contract(s) covering ~~((such))~~ those employees.

~~((4))~~ (5) Any other relevant facts.

~~((5))~~ (6) The name ~~((s)), signature(s), and~~ ~~((, if any,))~~ title ~~((s)), if any,~~ of the ~~((representative(s) of the petitioner(s), and))~~ person(s) filing the petition as well as the date(s) of the signature(s).

(7) Any other information requested in the unit clarification petition filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[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. WSR 01-14-009, § 391-35-050, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-073, filed 3/7/90, effective 4/7/90)

WAC 391-35-070 Amendment and withdrawal. ~~((Any))~~ A petition may be amended or withdrawn by the petitioner(s) under ~~((such))~~ any 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-15-032, filed 7/9/08, effective 8/9/08)

WAC 391-35-085 Amendment of certification. A party may file a petition to amend an existing certification to reflect a minor change in circumstances, such as a change of an employee organization's name or an employer's name, and the executive director may amend the certification (~~(, provided that the purpose of)~~) if the amendment ((is to reflect changed circumstances such as the name of a labor organization or the name of an employer, and the bargaining unit is not affected by the change and there is no question concerning representation)) does not add or remove positions from the existing bargaining unit or change the bargaining unit's configuration and there is no question concerning representation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070. WSR 08-15-032, § 391-35-085, filed 7/9/08, effective 8/9/08.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-090 Notice of hearing. If it appears to the executive director or designee that a disagreement exists which could be the basis for issuing an order clarifying the bargaining (~~unit or units~~) unit(s), a (~~hearing officer shall issue a~~) notice of hearing (~~and have it~~) will be issued and served on the parties. 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, 34.05.434. WSR 01-14-009, § 391-35-090, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-110 Coordination of proceedings. (1) 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~~) must be suspended, and all issues concerning the description of the bargaining unit (~~shall~~) must 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 or designee (~~shall have~~) has dis-

cretion 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, 34.05.070. WSR 01-14-009, § 391-35-110, filed 6/22/01, effective 8/1/01; WSR 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-073, filed 3/7/90, effective 4/7/90)

WAC 391-35-130 Hearings—Who ((shall)) may conduct. Hearings may be conducted by the commission, ((by)) the executive director, ((by)) or 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~~)) assigned.

[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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-170 Hearings—Reopening of hearing—Briefs. (1) Hearings ((shall be)) are public, ((except where)) unless a protective order is issued under WAC 10-08-200(7), and ((shall be)) are limited to matters concerning the clarification of the existing bargaining unit.

(a) The parties ((shall be)) are responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties((~~r~~)) to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200(8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

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

(3) The hearing officer may ((~~allow or~~)) direct the filing of briefs as to any or all of the issues in a case.

~~(4)~~ Arrangements and due dates for briefs ~~((shall be))~~ are established by the hearing officer.

~~(5)~~ Any brief ~~((shall))~~ must be filed ~~((with the hearing officer))~~ and served 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))~~.

~~((4))~~ ~~(6)~~ A party filing a brief under this section must limit ~~((its))~~ the brief's total length to ~~((twenty-five))~~ 25 pages (double-spaced, ~~((twelve-point))~~ 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ~~((in order))~~ to address novel or complex ~~((legal and/or factual issues raised by the objections))~~ issues; and

(b) The executive director, ~~((his or her))~~ the executive director's designee, or the hearing officer grants ~~((such a))~~ the motion for good cause shown ~~((; and))~~.

~~((e))~~ ~~(7)~~ A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the ~~((administrative))~~ hearing, and the hearing officer has the authority to orally grant ~~((such a))~~ the motion at ~~((such))~~ that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-170, filed 1/31/08, effective 4/1/08. 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. WSR 01-14-009, § 391-35-170, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-170, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-170, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-190 Proceedings before the executive director. (1)

The executive director may proceed 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))~~ at issue and issue an order clarifying the bargaining unit, dismiss the petition, or make other disposition of the matter.

(2) ~~((Where))~~ If 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) A party seeking review by the commission of an interlocutory decision of the executive director, ~~((his or her))~~ the executive director's designee, or a hearing officer must file a motion for discretionary review with the commission and a copy with the ~~((executive director or his or her designee))~~ person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, (~~his or her~~) the executive director's designee, or a hearing officer will be accepted by the commission only:

(i) If the executive director, (~~his or her~~) the executive director's designee, or the hearing officer has committed an obvious error (~~which~~) that would render further proceedings useless; (~~or~~)

(ii) If the executive director (~~or his or her~~), the executive director's designee, or the hearing officer has committed probable error and the interlocutory decision (~~of the executive director, his or her designee, or hearing officer~~) substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, (~~his or her~~) the executive director's designee, or the hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for (~~the exercise of revisory jurisdiction~~) immediate review by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed (~~fifteen~~) 15 pages (double-spaced, 12-point type) excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the (~~executive director's, his or her designee's, or hearing officer's~~) interlocutory decision or the issues pertaining to that decision.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-190, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-35-190, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-190, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

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~~) is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) (~~Where~~) If an order has been appealed, the due date for a notice of cross-appeal by other parties (~~shall be~~) is 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)~~) must 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)~~) that desires to cite or reassert a document previously filed in the matter (~~(shall)~~) must do so by reference to the document already on file (~~(7)~~) and shall not file or attach another copy of the document to (~~(papers)~~) documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served 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)~~) that the party filing an appeal or cross-appeal desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served 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)~~) that a party desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served 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)~~) to extend the due date may only be considered if made (~~(on or before)~~) by the date the brief is due (~~(7)~~) and in compliance with WAC 391-08-180. Extensions of time (~~(shall)~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~(its)~~) the brief's total length to (~~(twenty-five)~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~(in order)~~) to address novel (~~(and/or)~~) or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~(such a)~~) the motion for good cause shown.

(10) Any motion filed under (~~(this)~~) subsection (~~(shall)~~) (9) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~(such)~~) the motion.

[Statutory Authority: RCW 41.56.060, 41.56.090, 41.58.050. WSR 08-04-059, § 391-35-210, filed 1/31/08, effective 4/1/08. 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. WSR 00-14-048, § 391-35-210, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 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. WSR

80-14-047 (Order 80-6), § 391-35-210, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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~~) must 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 entire record transmitted to it, determine the status of each position, classification, or group covered by the appeal(~~r~~) 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. WSR 00-14-048, § 391-35-250, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-047 (Order 80-6), § 391-35-250, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, 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~~) may not be included in bargaining units (~~which include~~) with employees (~~who~~) occupying positions that 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. WSR 96-07-105, § 391-35-310, filed 3/20/96, effective 4/20/96.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-320 Exclusion of confidential employees. Confidential employees excluded from all collective bargaining rights (~~shall be~~) are limited to:

(1) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, (~~except that~~) and the role of (~~such~~) that person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(2) Any person who assists and acts in a confidential capacity to such person.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.030(2) and 41.59.020 (4)(c)(i) and (ii). WSR 01-14-009, § 391-35-320, filed 6/22/01, effective 8/1/01.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-340 Unit placement of supervisors—Bargaining rights of supervisors. (1) It (~~shall be~~) is presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates (~~(, in order)~~) to avoid a potential for conflicts of interest (~~(which)~~) that would otherwise exist in a combined bargaining unit.

(2) It (~~shall be~~) is presumptively appropriate to include persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") in separate bargaining units for the purposes of collective bargaining.

(3) The presumptions set forth in this section (~~shall be~~) are subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-340, filed 6/22/01, effective 8/1/01.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-350 Unit placement of regular part-time employees—Exclusion of casual and temporary employees. (1) (~~It shall be presumptively appropriate to include regular part-time employees~~) Except as provided in subsection (2) of this section, regular part-time employees are presumptively included in the same bargaining unit (~~(with)~~) as full-time employees performing similar work (~~(, in order)~~) to avoid a potential for conflicting work jurisdiction claims (~~(which would otherwise exist in separate units. Employees)~~).

(a) A regular part-time employee is any employee who, during the previous (~~(twelve)~~) 12 months, (~~(have)~~) worked more than one-sixth of the time normally worked by full-time employees (~~(,)~~) and who remains available for work on the same basis (~~(, shall be presumed to be regular part-time employees)~~).

(b) For employees of school districts and educational institutions, the term "time normally worked by full-time employees" (~~shall be~~) is based on the number of days in the normal academic year.

(2) (~~It shall be presumptively appropriate to exclude casual and temporary employees from bargaining units.~~)

~~(a) Casual employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to have had a series of separate and terminated employment relationships, so~~

that they lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

~~(b) Temporary employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.)~~ (a) Part-time and nonpermanent civil service employees covered by chapter 41.06 RCW are presumptively included in the same bargaining unit as full-time employees covered by chapter 41.06 RCW performing similar work regardless of the number of hours worked to avoid a potential for conflicting work jurisdiction claims.

(b) Temporary employees defined by WAC 357-04-045(1) may only be included in a bargaining unit as provided in WAC 357-04-045(3).

(3) The presumptions set forth in this section (~~shall be~~) are subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-350, filed 6/22/01, effective 8/1/01.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|---|
| WAC 391-35-002 | Sequence and numbering of rules—Special provisions. |
| WAC 391-35-026 | Special provision—State civil service employees. |
| WAC 391-35-099 | Special provision—Private sector and other employees. |
| WAC 391-35-254 | Special provision—Marine employees. |
| WAC 391-35-300 | School district employees. |
| WAC 391-35-301 | Higher education employees. |
| WAC 391-35-326 | Special provision—State civil service employees. |
| WAC 391-35-327 | Special provision—Higher education faculty. |
| WAC 391-35-342 | Special provision—Educational employees. |
| WAC 391-35-343 | Special provision—Academic employees. |
| WAC 391-35-344 | Special provision—Marine employees. |
| WAC 391-35-346 | Special provision—State civil service employees. |
| WAC 391-35-347 | Special provision—Higher education faculty. |
| WAC 391-35-356 | Special provision—State civil service employees. |

OTS-3727.1

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-45-001 Scope—Contents—Other rules. This chapter governs unfair labor practice proceedings ((before the public employment relations commission on complaints charging unfair labor practices)) under all chapters of the Revised Code of Washington (RCW) administered by the ((commission. 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 and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

(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)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-45-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-45-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-45-001, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-010 Complaint charging unfair labor practices—Who may file. A complaint charging that (~~a person~~) an employer or employee organization 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. WSR 00-14-048, § 391-45-010, filed 6/30/00, effective 8/1/00; WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-030 Complaint (~~in writing—Number of copies—Filing~~)—Filing and service. (~~Each~~) A complaint charging unfair labor practices (~~shall~~) may be filed through the agency's online e-filing system, by email, or in writing(~~, and shall be filed at~~) to the (~~commission's~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). 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. WSR 00-14-048, § 391-45-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-030, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-050 Contents of complaint filing forms—Contents of complaint. (~~Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:~~)

(1) Each completed unfair labor practice complaint filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(a) Information identifying the parties and (~~if known~~) their representatives (if know), including:

~~((a)) (i) The name, email address, mailing address, and telephone number of the employer (, and the name, address, telephone number, fax number, and email address of its principal) and of the employer's representative;~~

~~((b)) (ii) The name, email address, mailing address, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (the respondent) (, and the name, address, telephone number, fax number, and email address of its principal) and of the respondent's representative; and~~

~~((c)) (iii) The name, email address, mailing address, and telephone number (, fax number, and email address) of the party filing the complaint (the complainant) (, and the name, address, telephone number, fax number, and email address of its principal) and of the complainant's 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)) (b) Information concerning the parties' relationships, including:~~

~~((a) The employer's principal business;~~

~~((b)) (i) Identification of the employer department or division (in which) where the dispute (arises) arose; and~~

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

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

~~((ii)) (B) The parties have had a contract, and 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).~~

~~(c) Job titles of involved bargaining unit employees.~~

~~(d) The name, signature, and title, if any, of the person filing the complaint as well as the date of the signature.~~

~~(e) Any other information requested in the unfair labor practice complaint filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.~~

~~(2) Each complaint must contain in separate numbered paragraphs:~~

~~(a) Clear and concise statements of the facts constituting the alleged unfair labor practices, including the times, dates, and places of occurrences and the names of the participants; and~~

~~(b) A statement of the remedy sought by the complainant.~~

[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. WSR 00-14-048, §

391-45-050, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-070 Amendment. (1) A complaint may be amended upon motion made by the complainant(~~(r)~~) 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) A motion(~~(s)~~) to amend a complaint(~~(s shall be)~~) is subject to the following limitations:

(a) (~~(Prior to)~~) Before the appointment of an examiner, amendment (~~(shall be)~~) is 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)~~) before the opening of (~~(an evidentiary)~~) a hearing, amendment may be allowed upon motion to the examiner and subject to due process requirements;

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

(3) (~~(Where)~~) If a motion for amendment is denied, the proposed amendment (~~(shall)~~) will 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. WSR 00-14-048, § 391-45-070, filed 6/30/00, effective 8/1/00; WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-090 Withdrawal. (1) A complaint may be withdrawn by the complainant(~~(r)~~) through an email to the examiner or by a written request filed as required by WAC 391-08-120 before issuance of a decision by an examiner.

(2) A withdrawal "without prejudice" (~~shall~~) does 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. WSR 00-14-048, § 391-45-090, filed 6/30/00, effective 8/1/00; WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-45-110 Deficiency notice—(~~Preliminary ruling~~) Cause of action statement—Deferral to arbitration. The executive director (~~or a designated staff member~~), the executive director's designee, or an examiner 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 served on all parties,~~) identifying the defects and specifying a due date for the filing and service of an amended complaint will be issued and served on all parties. If the defects are not cured within (~~twenty-one~~) 21 days, an order (~~shall be issued and served,~~) dismissing the defective allegation(s) and stating the reasons for that action must be issued and served on all parties. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection (~~shall be~~) is the final order of the agency on the defective allegation(s) (~~7~~) 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~~) agency, a (~~preliminary ruling~~) cause of action statement summarizing the allegation(s) (~~shall~~) will be issued and served on all parties.

(a) A (~~preliminary ruling~~) cause of action statement forwarding a case for further proceedings is an interim order (~~which~~) that may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310(2).

(b) The (~~preliminary ruling~~) cause of action statement limits the (~~causes~~) cause(s) of action before an examiner and the commission. A complainant who claims that the (~~preliminary ruling~~) cause of action statement failed to address one or more causes of action (~~it~~) the complainant sought to advance in the complaint (~~must, prior to~~) may, before the issuance of a notice of hearing, seek clarification from the person (~~that~~) who issued the (~~preliminary ruling~~) cause of action statement.

(c) The (~~preliminary ruling shall~~) cause of action statement must 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 ~~((τ))~~ pending the outcome of related contractual dispute resolution procedures, but ~~((shall))~~ the agency retains jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered ~~((where))~~ if:

(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 allegations under this chapter ~~((shall))~~ must be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings ~~((shall be))~~ is considered binding, except ~~((where))~~ if:

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-110, filed 1/31/08, effective 4/1/08. 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. WSR 00-14-048, § 391-45-110, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-110, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-130 Examiner—Who may act. The executive director or ~~((a designated staff member))~~ designee shall assign an examiner to conduct further proceedings in the matter ~~((τ))~~ 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))~~ assigned.

[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. WSR 00-14-048, § 391-45-130,

filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-170 Notice of hearing. The ((~~examiner shall issue~~ a)) notice of hearing ((~~and have it~~)) will be issued and served on the parties. ((~~Attached to the notice of hearing shall be~~)) A copy of the ((~~preliminary ruling~~)) cause of action statement issued under WAC 391-45-110 must be attached to the notice of hearing. 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. WSR 00-14-048, § 391-45-170, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-190 Answer—Filing and service. An answer to a complaint charging unfair labor practices ((~~shall~~)) must be in writing. The respondent shall file and serve 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. WSR 00-14-048, § 391-45-190, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-190, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-190, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-210 Answer—Contents—Amendment—Effect of failure to answer. (1) An answer filed by a respondent (~~((shall))~~) must 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))~~) operates as a denial. An answer (~~((shall))~~) must assert any affirmative defenses that are claimed to exist.

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

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

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

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

(c) After the opening of (~~((an evidentiary))~~) a hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made (~~((prior to))~~) before 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))~~) are deemed to be admitted as true, and the respondent (~~((shall be))~~) is deemed to have 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))~~) may be granted for good cause, unless the complainant can show that it would be prejudiced by such action in accordance with WAC 391-08-003.

[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. WSR 00-14-048, § 391-45-210, filed 6/30/00, effective 8/1/00; WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-210, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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))~~) by the date specified for the filing of an answer. The motion (~~((shall))~~) must be filed and served as required by WAC 391-08-120.

(2) The filing of a motion under this section (~~((shall))~~) extends 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. WSR 00-14-048, § 391-45-250, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-250, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-45-260 Settlement ((conference)) mediation. ((Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference)) A settlement mediation concerning substantive issues may be held under WAC 10-08-200(15).

(1) A ((separate)) different case number ((shall be)) is assigned, and all ((files and papers)) documents for the settlement ((conference shall be)) mediation are kept in a case separate from the ((files and papers for)) documents in the unfair labor practice proceedings.

(2) ((A commission)) An agency staff member other than the assigned examiner ((shall be)) is assigned to explore settlement between the parties on the substantive issues.

(3) ((Any settlement conference shall be held in advance of the scheduled hearing date on)) A settlement mediation may be held at any time before issuance of a decision by an examiner in the underlying unfair labor practice proceedings.

(4) During a settlement ((conference)) mediation, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute.

(5) Participation in a settlement ((conference)) mediation is voluntary and nothing in this rule prohibits parties from exploring settlement on their own. Refusal by a party to participate in a voluntary settlement ((conference shall)) mediation does not prejudice that party in any manner.

(6) Conversations had and offers made in a settlement ((conference shall not be)) mediation are not admissible ((in)) into evidence at a hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-260, filed 1/31/08, effective 4/1/08. 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. WSR 00-14-048, § 391-45-260, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 88-12-056 (Order 88-05), § 391-45-260, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-270 Hearings—Reopening of hearing. (1) Hearings ~~((shall be))~~ are public, ~~((except where))~~ unless a protective order is issued under WAC 10-08-200(7), and ~~((shall be))~~ are limited to the portions of a complaint found to state a cause of action under WAC 391-45-110.

(a) The complainant ~~((shall be))~~ is responsible for the presentation of its case~~((r))~~ and ~~((shall have))~~ has the burden of proof.

(b) The respondent ~~((shall be))~~ is responsible for the presentation of its defense~~((r))~~ and ~~((shall have))~~ has 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 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))~~ that discovered 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. WSR 00-14-048, § 391-45-270, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-270, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-45-290 Posthearing briefs. (1) Any party ~~((shall be entitled))~~ may, upon request made before the close of the hearing, ~~((to))~~ file a posthearing brief.

(2) The examiner may direct the filing of briefs as to any or all of the issues in a case.

(3) Arrangements and due dates for briefs ~~((shall be))~~ are established by the examiner.

(4) Any brief ~~((shall))~~ must be filed ~~((with the examiner))~~ and served 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)).~~

~~((2))~~ (5) A party filing a brief under this section must limit ~~((its))~~ the brief's total length to ~~((twenty-five))~~ 25 pages (double-spaced, ~~((twelve-point))~~ 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ~~((in order))~~ to address novel or complex ~~((legal and/or factual issues raised by the objections))~~ issues; and

(b) The ~~((hearing))~~ examiner grants ~~((such a))~~ the motion for good cause shown~~((; and))~~.

~~((e))~~ (6) A motion for permission to file a longer brief may be made orally to the ~~((hearing))~~ examiner at the end of the ~~((administrative))~~ hearing, and the ~~((hearing officer))~~ examiner has the authority to orally grant ~~((such))~~ the motion at ~~((such))~~ that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-290, filed 1/31/08, effective 4/1/08. 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. WSR 00-14-048, § 391-45-290, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-290, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-290, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-45-310 Motions for discretionary review—Examiner decisions. (1) (a) A party seeking review by the commission of an interlocutory decision of the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ an examiner must file a motion for discretionary review with the commission and a copy with the ~~((executive director, his or her designee, or a hearing examiner,))~~ person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ an examiner will be accepted by the commission only:

(i) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has committed an obvious error ~~((which))~~ that would render further proceedings useless; ~~((or))~~

(ii) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has committed probable error and the ~~((decision of the))~~ interlocutory decision ~~((of the hearing examiner))~~ substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has so far departed from the accepted and usual course of administrative proceedings as to call for ~~((the exercise of revisory jurisdiction))~~ immediate review by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a ~~((preliminary ruling by the executive director or his or her designee or a hearing examiner))~~ cause of action statement under WAC 391-45-110; ~~((or))~~

(ii) Application of the six-month statute of limitations; or

(iii) Any evidentiary ruling by ~~((a hearing))~~ an examiner during the course of ~~((an administrative))~~ a hearing.

(d) If a motion for discretionary review is filed, the due date for any response is seven days following the date on which a party wishing to file a response is served with the motion. Responses must be filed and served as required by WAC 391-08-120.

~~(e)~~ A motion for discretionary review ~~((under this rule))~~, and any response, should not exceed ~~((fifteen))~~ 15 pages (double-spaced, 12-point type) excluding appendices.

~~((e))~~ (f) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the ~~((executive director's, his or her designee's, or hearing examiner's))~~ interlocutory decision or the issues pertaining to that decision.

(2) After the close of ~~((the))~~ a hearing and the filing of all briefs, ~~((the))~~ an 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))~~ is the final order of the agency~~((r))~~ with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 10-20-172, § 391-45-310, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-310, filed 1/31/08, effective 4/1/08. 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. WSR 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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~~((r))~~ if any mistake is discovered in the decision.

(1) Action may be taken under this section on the examiner's own motion~~((r))~~ 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))~~ 10 days following issuance of the decision.

(3) This section ~~((shall be))~~ is 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. WSR 00-14-048, § 391-45-330, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-330, filed 7/1/98, effective 8/1/98; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-330, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

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)~~) is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) (~~Where~~) If an order has been appealed, the due date for a notice of cross-appeal by other parties (~~(shall be)~~) is 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)~~) must 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)~~) that desires to cite or reassert a document previously filed in the matter (~~(shall)~~) must do so by reference to the document already on file (~~(r)~~) and shall not file or attach another copy of the document to (~~(papers)~~) documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served 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)~~) that the party filing an appeal or cross-appeal desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served 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)~~) that a party desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served 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)~~) to extend the due date may only be considered if made (~~(on or before)~~) by the date the brief is due (~~(r)~~) and in compliance with WAC 391-08-180. Extensions of time (~~(shall)~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~(its)~~) the brief's total length to (~~(twenty-five)~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~(in order)~~) to address novel or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~(such a)~~) the motion for good cause shown.

(10) Any motion filed under (~~(this)~~) subsection (~~(shall)~~) (9) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~(such)~~) the motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-350, filed 1/31/08, effective 4/1/08. 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. WSR 00-14-048, § 391-45-350, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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)~~) must 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 entire record (~~(and any briefs or arguments submitted)~~) transmitted to it, determine the appeal(~~(r)~~) 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. WSR 00-14-048, § 391-45-390, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-390, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-410 Unfair labor practice remedies—Back pay. If an unfair labor practice is found to have been committed, the commission

or an examiner shall issue a remedial order. In calculating back pay orders, the following (~~shall apply~~) applies:

(1) Individuals reinstated to employment with back pay (~~shall~~) must 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~~) must 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~~) agency 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~~) are subject to interest at the rate (~~which~~) that would accrue on a civil judgment of the Washington state courts(~~(7)~~) 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. WSR 00-14-048, § 391-45-410, filed 6/30/00, effective 8/1/00; WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-410, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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~~) must 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 and serve 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~~) must be expedited under WAC 391-45-110.

(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 is filed, the due date for counter-affidavits (~~(from other parties)~~) is seven days following the date on which (~~that party~~) a party wishing to file counter-affidavits is served with a motion for temporary relief.

((The)) Counter-affidavits ((shall)) must 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)) for temporary relief should be sought. In making its determination, the commission ((shall)) must adhere to the following policy:

(("))The name and authority of the public employment relations commission ((shall)) may not be invoked in connection with a request for temporary relief ((prior to)) before the completion of administrative proceedings under ((WAC 391-45-010, et seq.)) this chapter, 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)) if the status quo ((be preserved)) is not returned 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)) for temporary relief.

(b) Whenever temporary relief has been procured, the complaint ((which)) that has been the basis for the temporary relief ((shall)) must be heard expeditiously, and the case ((shall)) must 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)) does 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. WSR 00-14-048, § 391-45-430, filed 6/30/00, effective 8/1/00; WSR 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. WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-430, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-550 Collective bargaining—((Policy)) Agency determines mandatory subjects. It is the policy of the ((commission)) agency 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 particular

subject is mandatory or nonmandatory (~~(to be)~~) is a question of law and fact to be determined by the (~~(commission, and which)~~) agency and is not subject to waiver by the parties by their action or inaction. It is the policy of the (~~(commission)~~) agency 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. WSR 00-14-048, § 391-45-550, filed 6/30/00, effective 8/1/00; WSR 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. WSR 80-14-048 (Order 80-7), § 391-45-550, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|---|
| WAC 391-45-002 | Sequence and numbering of rules—Special provisions. |
| WAC 391-45-019 | Special provision—Private sector employees. |
| WAC 391-45-394 | Special provision—Marine employees. |
| WAC 391-45-552 | Special provision—Educational employees. |

OTS-3728.2

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

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 under all chapters of the Revised Code of Washington (RCW) administered by the (~~(commission. 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, and which also replaces some provisions of chapter 10-08 WAC.~~

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

(3) ~~Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(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)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-55-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-55-001, filed 6/22/01, effective 8/1/01; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-010 Impasses in contract negotiations—Request for contract mediation—Filing and service. A request for contract mediation may be ~~((made))~~ filed through the agency's online e-filing system, by email, or 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))~~ to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ~~((submitted))~~ filed jointly, the party ~~((submitting))~~ filing the request shall serve a copy~~((, as required by WAC 391-08-120 (3) and (4),))~~ on the other party to the dispute, as required by WAC 391-08-120 (3) and (4). The party or parties requesting contract mediation shall provide the following ~~((information))~~ to the agency:

(1) The name, email address, mailing address, and telephone number of the employer and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employer's representative.

(2) The name, email address, mailing address, and telephone number of the employee organization and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employee organization's representative.

~~((3))~~ ~~((The employer's principal business.~~

~~((4))~~ The parties' contractual relationship, indicating that:

(a) The parties~~((l))~~ have never had a contract; or

(b) The parties have had a contract, and a copy of the current or most recent ~~((applicable))~~ collective bargaining agreement is attached.

~~((5))~~ (4) A general description of the employee job classification(s) in the bargaining unit ~~((involved, specifying inclusions and exclusions)).~~

~~((6))~~ (5) 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))~~ (6) 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))~~ (7) Identification of the issues in dispute ~~((and the parties' positions on those issues))~~.

~~((10))~~ (8) The name(s), signature(s), and ~~((, if any,))~~ title(s), if any, of the ~~((representative(s) of the requesting party (parties), and))~~ person(s) filing the request as well as the date(s) of the signature(s).

(9) Any other information requested in the contract mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060 and 41.56.100. WSR 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. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-020 Grievance mediation—Request for grievance mediation—Filing and service. A request for appointment of a grievance mediator may be ~~((made))~~ filed through the agency's online e-filing system, by email, or in writing ~~((or by electronic telefacsimile transmission. The original request shall be submitted))~~ to the ~~((commission's))~~ agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ~~((submitted))~~ filed jointly, the party ~~((submitting))~~ filing 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, as required by WAC 391-08-120 (3) and (4). 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, email address, mailing address, and telephone number of the employer and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employer's representative;

(b) The name, email address, mailing address, and telephone number of the employee organization and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employee organization's representative;

(c) ~~((The employer's principal business;~~

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

~~((e))~~ (d) A general description of the employee job classification(s) in 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), if any, of the ((representative(s) of the requesting party (parties), and)) person(s) filing the request as well as the date(s) of the signature(s).~~~~

(4) Any other information requested in the grievance mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

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

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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))~~) will be assigned as mediator at the discretion of the executive director. If the parties have stipulated to the names of one or more persons who are acceptable to both parties as mediator, their request (~~((shall))~~) will 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.~~) For negotiations involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), if an agreement has not been reached by June 1st of the year in which negotiations occurred, a mediator will be preassigned. The parties are encouraged to meet with the mediator as soon as practicable. For bargaining units eligible for interest arbitration under RCW 47.64.300, the parties may still mutually agree to waive mediation under RCW 47.64.230.

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

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

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 other party (~~(other than the party making the request,)~~) and (~~(shall)~~) evaluate whether the parties have exchanged and considered (~~(the)~~) one another's proposals (~~(of one another)~~) and whether the intervention of the agency will have a beneficial impact on the negotiating process. (~~(Prior to)~~) Before 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)~~) agency 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. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-032, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-050 Submission of written proposals. Parties requesting the agency's 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 as well as any written material supporting the identified proposals.

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

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-070 Function of mediator. The mediator (~~(shall)~~) may meet with the parties or their representatives, or both, either jointly or separately, and (~~(shall)~~) may take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.030, 41.80.090. WSR 08-04-059, § 391-55-070, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-090 Confidential nature of mediation. Mediation meetings (~~shall not be~~) are not open to the public. Confidential information acquired by a mediator (~~shall~~) must not be disclosed to others outside of the mediation process for any purpose, and a mediator (~~shall~~) may 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. WSR 99-14-060, § 391-55-090, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-55-200 Interest arbitration—Certification of issues.

(1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(~~(7)~~) (14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2) (c) 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~~) will be implemented:

(a) The mediator shall notify the parties of (~~his or her~~) the mediator's 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 the 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 ar-

bitration under RCW 41.56.465 (1)(b), 41.56.475 (~~(+2)~~) (4)(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)~~) must be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward (~~(his or her)~~) a 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 41.56.090, 41.58.050, 41.58.065, 47.64.300, and 74.39A.270. WSR 12-05-066, § 391-55-200, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.56.090, 41.58.050, and 74.39A.270. WSR 10-20-172, § 391-55-200, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.450, [41.56].475, [41.56].492 and 74.39A.270. WSR 03-03-064, § 391-55-200, filed 1/14/03, effective 2/14/03. 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. WSR 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. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-205 Interest arbitration—Appointment of partisan arbitrators. For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496 and 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(~~(7)~~) and shall notify the opposite party and the executive director of the name, email address, mailing 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)~~) is deemed waived if neither party has notified the executive director of its appointee within (~~(fourteen)~~) 14 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)~~) that has designated a partisan arbitrator may substitute another person as its partisan arbitrator, upon notice to the other party and the executive director.

(3) By mutual agreement, the parties may waive the provisions in this rule and the appointment of partisan arbitrators.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-205, filed 7/1/99, effective 8/1/99; WSR 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. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-205, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-210 Interest arbitration—Selection of neutral chairperson. (1) For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496, if the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve(~~(7)~~) and shall notify the executive director of the identity of the chairperson.

(2) If the parties agree to have the (~~(commission)~~) agency 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)~~) may 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)~~) agency. Upon the submission of a request (~~(in compliance with this subsection)~~), the executive director shall appoint a neutral chairperson from the (~~(commission)~~) agency 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 public employment relations 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(~~(: ")~~) that the request is for interest arbitration proceedings under RCW 41.56.450.(~~(")~~) Referrals and selection from the public employment relations commission's dispute resolution panel (~~(shall be)~~) must be made as provided in WAC (~~(391-55-120)~~) 391-75-020. Referrals and selection from other panels (~~(shall)~~) must 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)~~) 28 days after certification of issues under WAC 391-55-200, the parties (~~(shall be)~~) are deemed to have waived the procedures in subsections (1) through (3) of this section. The (~~(executive director)~~) agency shall issue a list of dispute resolution panel members and the neutral

chairperson (~~(shall)~~) must be selected as provided in WAC (~~(391-55-120)~~) 391-75-020 unless the parties notify the executive director that by mutual agreement they have determined an alternative process for selecting a neutral chairperson.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-210, filed 7/1/99, effective 8/1/99; WSR 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. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-210, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-211 Special provision—Interest arbitration—Selection of neutral chairperson for state. (1) Preceding the commencement of negotiations for bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), but no later than February 1st of each even-numbered year, the parties shall utilize the following procedure to select a neutral chairperson unless an alternative process is specified by law or has been mutually agreed upon by the parties:

(a) 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.

(b) If the parties agree to have the agency 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 may 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 agency. Upon the submission of a request, the executive director shall appoint a neutral chairperson from the agency staff.

(c) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations 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 request a panel of at least five arbitrators specifying that the request is for interest arbitration proceedings under RCW 41.56.450. Referrals and selection from the public employment relations commission's dispute resolution panel must be made as provided in WAC 391-75-020. Referrals and selection from other panels must 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.

(d) If the parties have not notified the executive director of their selection of a neutral chairperson within 28 days after February 1st of each even-numbered year, or requested an extension of time to

complete the selection process, the parties are deemed to have waived the procedures in (a) through (c) of this subsection. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson must be selected as provided in WAC 391-75-020.

(2) Once a neutral chairperson is selected, the parties shall work with the neutral chairperson to select a mutually agreeable hearing date(s) and location. This information must be transmitted to the executive director within 30 days of it being finalized.

[]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-215 Interest arbitration—Conduct of proceedings—Waiver of objections. Proceedings (~~shall~~) must 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~~) is 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. WSR 99-14-060, § 391-55-215, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-215, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-220 Interest arbitration—Submission of proposals for arbitration. At least (~~fourteen~~) 14 days before the date of the hearing, or no later than the next business day after the issuance of the certification if the date between certification and hearing is less than 14 days, 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~~) are not entitled to submit issues (~~which~~) that 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. WSR 99-14-060, § 391-55-220, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-220, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-225 Interest arbitration—Prehearing conference—Hearing. (1) The neutral chairperson may, upon ~~((his or her))~~ the chairperson's own motion or upon request of a party, convene a prehearing conference ~~((or conferences))~~.

(a) The purpose ~~((or purposes))~~ of a prehearing conference ~~((include))~~ is to consider any one or more of the following:

(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))~~ Any other matters ~~((as))~~ that may aid in the disposition or settlement of the case.

(b) Prehearing conferences may be held by telephone conference call or other electronic means at a time and ~~((place))~~ location specified by the neutral chairperson.

(c) Following a prehearing conference, the neutral chairperson shall issue an order reciting the action taken at the conference ~~((r))~~ and the agreements made by the parties concerning all of the matters considered. If no objection is filed within ~~((ten))~~ 10 days after the date that the order is ~~((mailed))~~ issued, ~~((it shall))~~ the order controls 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))~~ the chairperson's own initiative. The parties may waive oral hearing by written agreement.

(a) A ~~((tape))~~ recording of the hearing ~~((shall))~~ must be taken and ~~((shall be))~~ is 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))~~ must have access to a copy.

(b) The statutory prohibition against a partisan arbitrator presenting the case for a party ~~((shall))~~ does 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. WSR 99-14-060, § 391-55-225, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-225, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-230 Interest arbitration—Order of proceedings and evidence. The order of presentation at the hearing (~~shall~~) must be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson (~~shall be~~) is the judge of the relevancy of the evidence. All evidence (~~shall~~) must 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~~) must be submitted to the neutral chairperson and copies (~~shall~~) must be provided to the partisan arbitrators and to the other parties. The exhibits (~~shall~~) must 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~~) the chairperson may deem to be material.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-230, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-230, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

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~~) may not be made solely on the default of a party, and the neutral chairperson (~~shall~~) may 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. WSR 99-14-060, § 391-55-235, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-235, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-240 Interest arbitration—Closing of arbitration hearings. The neutral chairperson (~~shall~~) will declare the hearing closed after the parties have completed presenting (~~their~~) any tes-

timony (~~and/or~~) or exhibits and submission of briefs or closing arguments within (~~agreed~~) the time limits as mutually agreed upon.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-240, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-240, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-245 Interest arbitration—Award. The rulings and determination of the neutral chairperson (~~shall be~~) are controlling(~~r~~) and (~~shall~~) do not require concurrence(~~r~~) but may be accompanied by (~~the~~) any concurring (~~and/or~~) or dissenting opinions of the partisan arbitrators. The rulings and determinations (~~shall not be~~) are not 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. WSR 99-14-060, § 391-55-245, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-55-245, filed 7/1/98, effective 8/1/98; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-245, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

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 arbitration panel member (~~of the arbitration panel~~), if any. The expenses of witnesses (~~shall~~) must be paid by the party producing them. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a recording or transcription of the proceedings, (~~shall~~) must be shared equally between the parties. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210(2), along with the costs of (~~tapes for a tape~~) a recording of the proceedings but not a transcription or the services of a court reporter, (~~shall~~) must be paid by the (~~commission~~) agency.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-255, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-255, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

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 bargaining must communicate its concerns to the other party during bilateral negotiations ~~((and/or))~~ or mediation or both. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed ~~((illegality))~~ nonmandatory subject of bargaining, the objecting party must file ~~((and process))~~ a complaint charging unfair labor practices under chapter 391-45 WAC ~~((prior to))~~ before 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 ~~((the))~~ collective bargaining ~~((the))~~ 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))~~ before the conclusion of the interest arbitration proceedings.

(c) If a ~~((preliminary ruling))~~ cause of action statement is issued under WAC 391-45-110 ~~((that an unfair practice violation could be found on))~~ for a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint ~~((shall))~~ must 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))~~ must be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that ~~((the))~~ any suspended issue ~~((or issues was/were))~~ was unlawfully advanced or affected by unlawful conduct, the ~~((issue or issues shall))~~ issue(s) must be stricken from the certification issued under WAC 391-55-200, and the party advancing the proposal ~~((shall))~~ is only ~~((be))~~ permitted to advance ~~((such))~~ modified proposals ~~((as))~~ that are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that ~~((the))~~ any suspended issue ~~((or issues was/were))~~ was lawfully advanced, the suspension under this section ~~((shall))~~ must be terminated and the ~~((issue or issues shall))~~ issue(s) must 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. WSR 99-14-060, § 391-55-265, filed 7/1/99, effective 8/1/99.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-300 Fact-finding. If a dispute has not been settled after bilateral negotiations and mediation, ~~((either))~~ fact-finding may be initiated. A party may request the appointment of a fact finder by giving written notice to the ~~((commission))~~ agency, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW who have made a request for the appointment of a fact finder, a period of ~~((ten))~~ 10 days of mediation must have elapsed. The parties may, by agreement made at any time ~~((prior to))~~ before the appointment of a fact finder, extend the period for mediation or ~~((place in the hands of))~~ authorize the mediator ~~((the determination of))~~ to determine when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding ~~((shall))~~ must be initiated if resolution is not reached through mediation by ~~((one hundred))~~ 100 days beyond the expiration date of a contract previously negotiated under that chapter or ~~((one hundred))~~ 100 days from the initiation of mediation if no such contract exists.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-300, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-310 Selection of fact finder. (1) Upon the submission of a timely request for fact-finding, ~~((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.))~~

(a) 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 within seven days, they shall immediately notify the executive director.

~~((d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).))~~

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder.

(a) For disputes under chapter 41.59 RCW, the fact finder ~~((shall))~~ must be a member of the ~~((commission))~~ agency 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)) may 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~~)) agency.

(b) For disputes under chapter 41.80 RCW, the fact finder may be a member of the ((~~commission~~)) agency staff or ((~~may be~~)) a member of the agency's dispute resolution panel ((~~established in WAC 391-55-120~~)).

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 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. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-315 Conduct of fact-finding proceedings—Waiver of objections. Proceedings ((shall)) must 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~~)) that proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and ((~~who~~)) that fails to state its objection in writing((~~, shall be~~)) is deemed to have waived its right to object.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-315, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-315, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-320 Submission of proposals for fact-finding. At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties ((~~shall not be~~)) are not entitled to submit issues ((~~which~~)) that were not among the issues mediated under WAC 391-55-070.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-320, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and

41.59.120. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-321 Fact-finding prehearing conference. The fact finder may, upon the fact finder's own motion or upon request of a party, convene a prehearing conference.

(1) The purpose of a prehearing conference is to consider any one or more of the following:

(a) Simplification of issues;

(b) Identification of evidence or supporting documentation that either one party or both may be required to bring to the hearing;

(c) Limitations on the number and consolidation of the examination of witnesses;

(d) Procedural matters; and

(e) Any other matters that may aid in the disposition or settlement of the case.

(2) Prehearing conferences may be held by telephone conference call or other electronic means at a time and location specified by the fact finder.

[]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-325 Fact-finding hearing. The fact finder shall establish a date, time, and place for a hearing. The fact-finding hearing (~~(shall be)~~) is 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)~~) the fact finder's own initiative. The parties may waive oral hearing by written agreement.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-325, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-330 Order of proceedings and evidence. The order of presentation at the fact-finding hearing (~~(shall)~~) must be as agreed by the parties or as determined by the fact finder. The fact finder (~~(shall be)~~) is the judge of the relevancy of the evidence. All evidence (~~(shall)~~) must 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~~) must be submitted to the fact finder and copies (~~shall~~) must be provided to the other parties. The exhibits (~~shall~~) must 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 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-330, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-335 Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party (~~who~~) that, 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~~) may not be made solely on the default of a party, and the fact finder (~~shall~~) may require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-335, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 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. WSR 81-02-034 (Order 81-01), § 391-55-335, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-340 Closing of fact-finding hearings. The fact finder (~~shall~~) will declare the hearing closed after the parties have completed presenting (~~their~~) any testimony (~~and/or~~) or exhibits and submission of briefs or closing arguments within (~~agreed~~) the time limits as mutually agreed upon.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-340, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-345 Findings of fact and recommendations. Within ~~((thirty))~~ 30 days after ~~((his or her))~~ appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder ~~((shall not be))~~ are not subject to appeal to the commission. Fact finders ~~((shall))~~ may rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties~~((r))~~ and ~~((shall))~~ may not rule on whether a subject or proposal in dispute is a mandatory subject for collective bargaining.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-345, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 98-14-112, § 391-55-345, filed 7/1/98, effective 8/1/98; WSR 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. WSR 81-02-034 (Order 81-01), § 391-55-345, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-350 Responsibility of parties after fact-finding.

The parties are entitled to consider the fact finder's recommendations privately~~((r))~~ before they are made public.

(1) For cases under chapter 41.59 RCW, within five days after the findings of fact and recommendations have been issued, the parties shall notify the ~~((commission))~~ agency and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within ~~((ten working))~~ 10 days after the findings of fact and recommendations have been issued, the parties shall notify the ~~((commission))~~ agency and each other whether they accept the recommendations of the fact finder.

(3) 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 ask the agency to provide further mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 00-14-048, § 391-55-350, filed 6/30/00, effective 8/1/00; WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-355 Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses (~~(shall)~~) must be paid by the party producing them. The fees and expenses of a fact finder (~~(shall)~~) must be paid as follows:

(1) A fact finder appointed by the (~~(commission)~~) agency from the (~~(commission)~~) agency staff under WAC 391-55-310 (2)(a) (~~(shall)~~) must be paid by the (~~(commission)~~) agency.

(2) A fact finder selected from the dispute resolution panel or some other source (~~(shall)~~) must be paid by the parties, in equal shares.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-355, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 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. WSR 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-365 Advisory opinion. For bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), during negotiations for a successor agreement if a dispute arises concerning the scope of what is eligible to be bargained (i.e., mandatory or nonmandatory subjects of bargaining), either party may request an advisory opinion from the executive director through the following process:

(1) During the course of negotiations or mediation, upon receipt of any proposal that one party believes may constitute a nonmandatory subject of bargaining, the receiving party must put the other party on notice of the belief that the proposal submitted is nonmandatory.

(2) A cooling-off period must be invoked during which both parties must discuss the alleged nonmandatory proposal(s) in at least one subsequent bargaining or mediation session.

(3) If, after the cooling-off period, the offering party does not withdraw or modify the proposal(s) to eliminate any nonmandatory elements, either party may request an advisory opinion from the executive director. The request must be filed with the agency and served on all parties as required by WAC 391-08-120.

(4) With any request for an advisory opinion, the requesting party shall include only the following documentation and written materials:

(a) A copy of the proposal(s) alleged to be nonmandatory;

(b) A certification from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling-off period was invoked;

(c) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(d) A copy of any legal material supporting the alleged nonmandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(5) Within five business days of receipt of service of the request for an advisory opinion, the other party may file a response, which may include only the following documentation and written materials:

(a) A response from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling off period was invoked;

(b) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(c) A copy of any legal material supporting the alleged mandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(6) Upon filing of the materials outlined in subsections (4) and (5) of this section, the executive director shall review all materials and notify the parties if an advisory opinion will be issued. If the executive director determines it appropriate to issue an advisory opinion, it must be issued within 30 days of the filing of all materials outlined above. If the executive director determines it is not appropriate to issue an advisory opinion, the executive director shall notify the parties in writing.

(7) An advisory opinion is not a final agency decision and is not subject to appeal under WAC 391-45-350. Advisory opinions are not binding upon the agency and do not constitute evidence of an unfair labor practice in proceedings before the agency.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|-----------------|---|
| WAC 391-55-002 | Sequence and numbering of rules—Special provisions. |
| WAC 391-55-071 | Special provision—State patrol personnel. |
| WAC 391-55-0715 | Special provision—Public employees. |
| WAC 391-55-072 | Special provision—Educational employees. |
| WAC 391-55-110 | Dispute resolution panel—Membership. |
| WAC 391-55-120 | Dispute resolution panel—Referral and selection procedures. |
| WAC 391-55-130 | Disclosure. |
| WAC 391-55-150 | Vacancies. |
| WAC 391-55-201 | Special provision—Certification of issues—Public employees. |

WAC 391-55-202

Special provision—Certification of
issues—Educational employees.**OTS-3729.1**AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

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 under all chapters of the Revised Code of Washington (RCW) administered by the (~~commission. 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, and which also replaces some provisions of chapter 10-08 WAC.~~

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

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(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))~~ agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-65-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-65-001, filed 6/22/01, effective 8/1/01; WSR 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. WSR 80-14-050 (Order 80-9), § 391-65-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-010 Grievance arbitration request—Who may ((submit)) file. (~~Where there is an agreement~~) If the parties agree to arbitrate, a request for appointment of an arbitrator to hear and determine issues arising out of the interpretation or application of a col-

lective bargaining agreement may be (~~submitted~~) 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 and 41.56.125. WSR 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. WSR 80-14-050 (Order 80-9), § 391-65-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-030 (~~(Grievance arbitration)~~) Request for grievance arbitration—Filing and service. A request for appointment of a grievance arbitrator may be (~~made~~) filed through the agency's online e-filing system, by email, or 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))~~) to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not (~~submitted~~) filed jointly, the party (~~submitting~~) filing 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, 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 and 41.56.125. WSR 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. WSR 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. WSR 80-14-050 (Order 80-9), § 391-65-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-050 (~~(Grievance arbitration)~~) Contents of request filing forms. Each (~~request for appointment of a grievance arbitrator shall contain~~) completed grievance arbitrator request filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

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

(a) The name, email address, mailing address, and telephone number of the employer and (~~the name, address and telephone number of its principal~~) of the employer's representative;

(b) The name, email address, mailing address, and telephone number of the employee organization and (~~the name, address and telephone~~)

~~number of its principal)) of the employee organization's representative;~~

~~(c) ((The employer's principal business;~~

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

~~((e)) (d) A general description of the employee job classification(s) in 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))~~ maintained by the agency under WAC 391-75-010.

(4) The name(s), signature(s), and ~~((, if any,))~~ title(s), if any, of the ~~((representative(s) of the requesting party (parties), and))~~ person(s) filing the request as well as the date(s) of the signature(s).

(5) Any other information requested in the grievance arbitrator request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 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. WSR 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. WSR 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. WSR 80-14-050 (Order 80-9), § 391-65-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

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))~~ will be assigned as grievance arbitrator. The parties ~~((shall))~~ are 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))~~. However, the parties may jointly express a preference for appointment of one or more staff members as their arbitrator, and their request ((shall)) will 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~~) will 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~~) will 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. WSR 00-14-048, § 391-65-070, filed 6/30/00, effective 8/1/00; WSR 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. WSR 80-14-050 (Order 80-9), § 391-65-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-090 (~~(Grievance arbitration)~~) Designation of panel of arbitrators. Upon the request of a party, the agency shall (~~furnish~~) provide a list of (~~members of~~) arbitrators from the dispute resolution panel in accordance with WAC 391-75-020(1). (~~Names shall be referred and an arbitrator shall be selected under WAC 391-55-120~~) The parties must select an arbitrator under the procedures specified in WAC 391-75-020(2).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 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 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

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~~) must be kept in the public files (~~of~~) maintained by the agency.

(2) Except as provided in subsection(~~s~~) (1) (~~and (2)~~) of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

(3) Rulings, actions, and decisions issued by staff arbitrators under this chapter (~~shall~~) are not (~~be~~) subject to appeal to the commission (~~or the marine employees' commission~~).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.130, and 49.39.060. WSR 12-05-066, § 391-65-110, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW

28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-65-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.56.125. WSR 03-03-064, § 391-65-110, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-110, filed 7/1/99, effective 8/1/99; WSR 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. WSR 80-14-050 (Order 80-9), § 391-65-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-65-150 (~~(Grievance arbitration)~~) Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its arbitration panel member, if any (~~(of an arbitration panel)~~). The expenses of witnesses (~~(shall)~~) must be paid by the party producing them. The (~~(commission)~~) agency shall pay the salary and expenses of a staff member assigned under WAC 391-65-070, but the (~~(commission)~~) agency shall not pay any costs for recording (~~(and/or)~~) or transcription of proceedings (~~(r)~~) or any 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)~~) 391-75-020.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-65-150, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 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. WSR 80-14-050 (Order 80-9), § 391-65-150, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|---|
| WAC 391-65-002 | Sequence and numbering of rules—Special provisions. |
| WAC 391-65-075 | Special provision—Marine employees. |
| WAC 391-65-130 | Grievance arbitration—Award. |

OTS-3730.3

**Chapter 391-75 WAC
DISPUTE RESOLUTION PANEL AND LAW ENFORCEMENT ARBITRATOR ROSTER**

NEW SECTION

WAC 391-75-001 Scope—Contents—Other rules. This chapter governs the maintenance of the dispute resolution panel and law enforcement arbitrator roster.

[]

NEW SECTION

WAC 391-75-010 Dispute resolution panel—Membership. The agency shall maintain a panel of individuals qualified to serve in an impartial capacity in the resolution of labor disputes.

(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 agency staff:

(a) A master's degree in labor relations, personnel management, industrial relations, or closely allied field, or a law degree;

(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 may substitute, year for year, for education.

(2) Applicants for membership on the dispute resolution panel shall provide at least five letters of recommendation supporting their acceptability as an impartial from:

(a) At least two management representatives;

(b) At least two union representatives; and

(c) At least one impartial arbitrator, mediator, or labor relations administrative agency official.

(3) All letters of recommendation submitted under subsection (2) of this section must be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter.

(4) Applicants for membership on the dispute resolution panel 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.

(5) 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 may be subject to administrative verification.

(6) Applications of persons appearing to be qualified for membership on the panel are 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 notify the applicant of the determination made.

(7) No member of the commission appointed under RCW 41.58.010 may be an active member of the dispute resolution panel.

(8) Upon appointment to the dispute resolution panel by the commission, the panel member may be placed under contract pursuant to statute. Only persons listed on the panel may be compensated by the agency under a personal service contract.

[]

NEW SECTION

WAC 391-75-020 Dispute resolution panel—Referral and selection procedures. (1) All referrals from the dispute resolution panel are made by random selection from 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 will supply seven names.

(b) Where the parties request a specific number of names, the agency will supply the number requested.

(c) The agency will post on its website at www.perc.wa.gov biographical information, including background, qualifications, and experience, for each of the arbitrators on the list supplied to the parties.

(d) The agency will supply the parties with a second list or additional name(s) 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 must be paid by the parties under applicable rules or as agreed by the parties.

[]

NEW SECTION

WAC 391-75-040 Law enforcement arbitrator roster—Membership. The agency shall maintain a roster of nine to 18 individuals qualified to serve in an impartial capacity for disputes involving law enforcement personnel disciplinary actions that are submitted to binding grievance arbitration under an existing collective bargaining agreement.

(1) In addition to the qualifications set forth in RCW 41.58.070(4), applicants for membership on the law enforcement arbitrator roster shall provide at least five letters of recommendation supporting their acceptability as an impartial from:

(a) At least two management representatives;

(b) At least two union representatives; and

(c) At least one impartial arbitrator, mediator, or labor relations administrative agency official.

(2) All letters of recommendation submitted under subsection (1) of this section must be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter.

(3) Applicants for membership on the law enforcement arbitrator roster shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications, and affiliations. All information submitted may be subject to administrative verification.

(4) Applications of persons appearing to be qualified for membership on the roster are forwarded to the commission for consideration and action. The commission shall review each application submitted together with the supporting letters of recommendation. Individuals selected by the commission for appointment to the law enforcement arbitrator roster will be provided with a letter of appointment designating the expiration date of the appointee's term. Except as provided in RCW 41.58.070(6), a person appointed to the law enforcement arbitrator roster serves a three year term.

(a) If an appointee desires to be reappointed to the roster for an additional term, the appointee must notify the executive director of this desire in writing within 60 days before the expiration date of the appointee's current term. Any notice for reappointment will be transmitted to the commission for its consideration consistent with this section.

(b) If the appointee declines to seek reappointment or fails to request reappointment, the commission may then fill the vacancy on the roster consistent with RCW 41.58.070 and this section.

(5) No member of the commission appointed under RCW 41.58.010 may be an active member of the law enforcement arbitrator roster.

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NEW SECTION

WAC 391-75-050 Awards. 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.

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NEW SECTION

WAC 391-75-060 Ethical standards. Whenever it appears to the commission that an applicant or member of the dispute resolution panel or law enforcement arbitrator roster has failed or refused to comply with applicable statutes, rules, and ethical standards, the application must be rejected or the member must be removed from the dispute resolution panel or law enforcement arbitrator roster. A member must

also be removed from the dispute resolution panel or law enforcement arbitrator roster if the member has:

- (1) Ceased accepting appointments as an impartial in the resolution of labor disputes;
- (2) Failed to keep the agency informed of the member's current email address, mailing address, and telephone number; or
- (3) Failed to follow ethical standards and procedures as set forth in the "Code of Professional Responsibility for Arbitrators of Labor Management Disputes" as approved by the National Academy of Arbitrators, the Federal Mediation and Conciliation Service, and the American Arbitration Association.

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NEW SECTION

WAC 391-75-070 Impartiality. Persons referred from the dispute resolution panel or law enforcement arbitrator roster shall be impartial. No active member of the dispute resolution panel or law enforcement arbitrator roster may serve in any capacity as an advocate or representative for either labor or management in labor relations matters. Any member of the panel or roster who intends to engage in advocacy work shall notify the executive director and will be placed on inactive status while their advocacy work continues.

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NEW SECTION

WAC 391-75-080 Disclosure. Before accepting an appointment as an arbitrator from either the dispute resolution panel or the law enforcement arbitrator roster, or as soon as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity shall disclose to the parties and to the executive director any circumstances likely to create an appearance of bias or which might disqualify that person from serving in the impartial capacity. Employment of the person or any member of their immediate family by any party is 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 must be vacated.

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