

Chapter 316-75 WAC

MARINE EMPLOYEES' UNION SECURITY DISPUTE RULES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

316-75-290	Commission action. [Statutory Authority: RCW 47.64.-280, 84-07-037 (Resolution No. 84-01), § 316-75-290, filed 3/20/84.] Repealed by 90-01-120, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280 and 34.05.220.
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WAC 316-75-001 Scope—Contents—Other rules.

This chapter governs proceedings before the marine employees' commission relating to union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 316-75 WAC, except:

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 47.64.280 and 34.05.220, 90-01-120, § 316-75-001, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-75-001, filed 3/20/84.]

WAC 316-75-010 Union security—Obligation of exclusive bargaining representative.

An exclusive bargaining representative which desires to enforce a union security provision contained in a collective bargaining agreement negotiated under the provisions of chapter 47.64 RCW shall provide each affected employee with a copy of the collective bargaining agreement containing the union security provision and shall specifically advise each employee of his or her obligation under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

[Statutory Authority: RCW 47.64.280 and 34.05.220, 90-01-120, § 316-75-010, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-75-010, filed 3/20/84.]

WAC 316-75-030 Union security—Assertion of right of nonassociation.

An employee who, pursuant to RCW 47.64.160, asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall notify the exclusive bargaining representative, in writing, of the claim of a right of nonassociation and shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision.

[Statutory Authority: RCW 47.64.280 and 34.05.220, 90-01-120, § 316-75-030, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-75-030, filed 3/20/84.]

WAC 316-75-050 Union security—Response by exclusive bargaining representative.

Within thirty days after it is served with written notice of a claimed right of nonassociation under WAC 316-75-030, the exclusive bargaining representative shall respond to the employee, in writing, both as to the eligibility of the employee to make alternative payments and as to the charitable organization(s) suggested by the employee. If a dispute exists concerning whether the employee is within a class of employees obligated under the terms of the union security provision, all such matters of contractual interpretation shall be resolved under such procedures as may be available for unit clarification, under chapter 316-35 WAC, or resolution of disputes concerning the inter-

pretation or application of the collective bargaining agreement, under chapter 316-65 WAC.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-050, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-050, filed 3/20/84.]

WAC 316-75-070 Union security—Filing of dispute with commission. In the event of a disagreement between an employee and his or her exclusive bargaining representative as to the eligibility of such employee to make alternative payments or as to the organization which is to receive such payments, either the employee or the exclusive bargaining representative may file with the commission a petition for a declaratory ruling on the union security obligations of the affected employee.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-070, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-070, filed 3/20/84.]

WAC 316-75-090 Union security—Petition form—Number of copies—Filing—Service. Each petition for declaratory ruling on union security obligations shall be prepared in conformance with WAC 316-75-110. The original petition shall be filed with the commission at its Olympia office, and the party filing the petition shall serve a copy on the other party to the dispute and on the department.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-090, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-090, filed 3/20/84.]

WAC 316-75-110 Union security—Contents of petition. Each petition shall be headed "In the matter of the petition of (name of petitioning party) for a declaratory ruling concerning the union security obligations of (name of affected employee(s)) under a collective bargaining agreement between Washington state department of transportation, marine division, and (name of exclusive bargaining representative)," and shall contain:

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

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

(3) The name, address and telephone number of the affected employee(s) and the name, address and telephone number of his/her/their representative.

(4) Statements, in additional numbered paragraphs, of the matters in dispute.

(5) A copy, attached to the petition as an exhibit, of the union security provision under which the dispute arises.

(6) Any other relevant facts.

(7) The signature(s) and, if any, the title(s) of the petitioner(s) and/or his/her/their representative(s).

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-110, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-110, filed 3/20/84.]

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WAC 316-75-130 Union security—Escrow of disputed funds by department. Upon being served with a copy of a petition filed under WAC 316-75-070, the department shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Said funds shall draw interest at the rate provided by commercial banks for regular pass-book savings accounts. While the proceedings remain pending before the commission, the department shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-130, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-130, filed 3/20/84.]

WAC 316-75-150 Union security—Investigation—Settlement. The commission shall refer the petition under dispute to one of its members, who shall conduct an investigation and such prehearing conferences as may be necessary to determine the relative positions of the parties and the facts and authorities relied upon by them. He/she shall encourage the parties to reach agreement, expressed in stipulations binding on all parties. If the parties do not reach agreement, the commissioner shall issue a declaratory order which either grants or denies the petition, subject to commission review under WAC 316-02-230, or shall order a hearing under WAC 316-75-170.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-150, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-150, filed 3/20/84.]

WAC 316-75-170 Union security—Notice of hearing. If the petition raises material questions of fact which cannot be resolved without a hearing, and if summary disposition under WAC 316-02-230 is not appropriate, there shall be issued and served on each of the parties to the dispute and on the department a notice of hearing before the commission or a commissioner. Any such notice and hearing and further proceedings shall be in accordance with chapter 316-35 or 316-65 WAC and WAC 316-75-050, as the commission directs. Any such notice may be amended or withdrawn prior to the close of the hearing.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-170, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-170, filed 3/20/84.]

WAC 316-75-190 Union security—Hearings—Who shall conduct. Hearings may be conducted by the commission or a member of the commission assigned as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-190, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-190, filed 3/20/84.]

WAC 316-75-210 Authority of hearing officer. The hearing officer shall have the authority granted by WAC 316-35-150 or 316-65-515, whichever is applicable.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-210, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-210, filed 3/20/84.]

WAC 316-75-230 Hearings—Nature and scope.

Hearings shall be public and shall be limited to matters concerning the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-230, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-230, filed 3/20/84.]

WAC 316-75-250 Proceedings before the hearing officer.

After the close of the hearing, the assigned commissioner may proceed forthwith upon the record, after submission of briefs or after further hearing, as may be appropriate, and shall issue and serve on the parties an order determining the matter, or shall refer the matter back to the commission. Thereupon he/she shall transfer the entire record in the proceeding to the commission.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-250, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-250, filed 3/20/84.]

WAC 316-75-270 Proceedings before the commission—Petition for review.

The final order of the hearing officer shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days following the date of the order issued by the hearing officer. The original petition for review shall be filed with the commission at its Olympia office, and the party filing the petition shall serve a copy on the other party to the proceeding and on the employer. The petition for review shall identify the actions or rulings claimed to be in error. Any party to the proceeding may, within fourteen days after the initiation of review, file briefs or written arguments for consideration by the commission. The original brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served upon the other party. The commission or the assigned commissioner may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established. The commission may request the parties to appear before it to make oral argument as to certain of the issues or all of the issues in the matter.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-270, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-270, filed 3/20/84.]

WAC 316-75-310 Implementation. Where alternative payments in lieu of payments under a union security agreement have been agreed upon by the parties or ordered by the commission, the department shall release any funds (together with accumulated interest) held in escrow under WAC 316-75-130 to the designated charitable organization and the employee shall thereafter make payments and shall furnish written proof to the exclusive bargaining representative that such payments have been made to the designated charitable organization. Where the employee is found ineligible to make alternative payments, the department shall release any funds (together with accumulated interest) held in escrow to the exclusive bargaining representative and shall enforce the union security provision according to its terms. The depart-

ment and the exclusive bargaining representative shall allow the affected employee a grace period of not less than thirty days following the agreement or final order of the commission to correct any arrearages.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-120, § 316-75-310, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-310, filed 3/20/84.]