Chapter 391-25 WAC
REPRESENTATION CASE RULES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-25-011 Special provision—Optional coverage of classified employees of institutions of higher education under chapter 41.56 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.56.201. WSR 03-03-064, § 391-25-011, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.201. WSR 96-07-105, § 391-25-011, filed 3/20/96, effective 4/20/96.] Repealed by WSR 03-11-029, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 41.56.201.

391-25-076 Special provision—State civil service employees. [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, § 391-25-076, filed 1/14/03, effective 2/14/03.] Repealed by WSR 08-04-059, filed 1/31/08, effective 4/1/08.

391-25-216 Special provision—State civil service employees. [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, § 391-25-216, filed 1/14/03, effective 2/14/03.] Repealed by WSR 03-11-029, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060.

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 Repealed by WSR 83-24-032 (Order 83-02), filed 12/1/83, effective 1/1/84.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

391-25-397 Special provision—State employees. [Statutory Authority: RCW 41.58.050, 41.80.080. WSR 08-04-058, § 391-25-397, filed 1/31/08, effective 4/1/08.] Repealed by WSR 08-11-125, filed 5/21/08, effective 6/21/08.

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

WAC 391-25-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission on petitions for investigation of questions concerning representation of employees 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.

[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.]

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

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

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

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 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, § 391-25-002, filed 2/15/12, effective 3/17/12. 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, § 391-25-002, 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, § 391-25-002, 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, § 391-25-002, filed 6/22/01, effective 8/1/01. 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, § 391-25-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-032 (Order 83-02), § 391-25-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.-050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-002, filed 9/30/80, effective 11/1/80.]

WAC 391-25-010 Petition for investigation of a question concerning representation of employees—Who may file. A petition for investigation of a question concerning representation of employees 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.]

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

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

WAC 391-25-030 Petition—Time for filing. (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) 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;

(iii) The agreement must contain a fixed expiration date not less than ninety 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) An agreement to extend or replace a collective bargaining agreement shall not bar a petition filed in the "window" period of the previous agreement.

(c) 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 during that period will bar a petition under this chapter. 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 given a sixty-day protected period commencing on the date the withdrawal or dismissal is final.

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

(2) 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 if it is filed:

(a) More than twelve 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 preclude petitions filed under WAC 391-25-440 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.]

WAC 391-25-032 Special provision—Educational employees. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date of the agreement or any renewals or extensions thereof as long as such renewals and extensions do not exceed three years.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.59.070(3). WSR 03-03-064, § 391-25-032, filed 1/14/03, effective 2/14/03.]

WAC 391-25-034 Special provision—Marine employees. For marine employees:

(1) The "window" period specified in WAC 391-25-030 (1) shall be computed as not more than one hundred twenty nor less than ninety days prior to the stated expiration date of the collective bargaining agreement.

(2) The "protected" period specified in WAC 391-25-030 (1)(c) shall be computed as ninety days.

(3) The duration of any collective bargaining agreement negotiated under chapter 47.64 RCW shall not exceed one fiscal biennium.

[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-25-034, filed 2/15/12, effective 3/17/12.]

WAC 391-25-036 Special provision—State civil service employees. For state civil service employees:

(1) The "window" period specified in WAC 391-25-030(1) shall be computed as not more than one hundred twenty nor less than ninety days prior to the stated expiration date of the collective bargaining agreement.

(2) The "protected" period specified in WAC 391-25-030 (1)(c) shall be computed as ninety days.

(3) The duration of any collective bargaining agreement negotiated under chapter 41.80 RCW shall not exceed one fiscal biennium.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.80.001 and [41.80].080. WSR 03-03-064, § 391-25-036, filed 1/14/03, effective 2/14/03.]

WAC 391-25-037 Special provision—Higher education faculty. If there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement; provided that in the event a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for more than three years, then a question concerning representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date or any subsequent anniversary date of the agreement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.020(2). WSR 03-03-064, § 391-25-037, filed 1/14/03, effective 2/14/03.]

WAC 391-25-050 Petition in writing—Number of copies—Filing—Service. Each petition for investigation of a question concerning representation shall be in writing, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The party filing the petition shall serve a copy 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.]

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. (1) This rule consolidates special rules applicable to:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300, which extend the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.-270.

(b) Family child care providers under RCW 41.56.028, which extends coverage of chapter 41.56 RCW to "child care providers" defined as persons who:

(i) Provide regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours;

(ii) Receive child care subsidies; and

(iii) Are either licensed by the state under RCW 74.15.-030 or are exempt from licensing under chapter 74.15 RCW.

(c) Adult family home providers under RCW 41.56.029, which extends coverage of chapter 41.56 RCW to "adult family home providers" who are persons defined as a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(d) Language access providers under RCW 41.56.510, which extends coverage of chapter 41.56 RCW to "language access providers" who are persons defined as any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department of social and health services.

(2) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by RCW 74.39A.270 and 74.39A.300, to require a ten percent showing of interest for either a petitioner or an intervenor.

(3) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.-510.

(4) A party wishing to participate as an intervenor in representation proceedings governed by this rule must file a motion to intervene no later than ten days following receipt of the petition for investigation of a question concerning representation.

(5) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028; or

(c) Adult family home providers under RCW 41.56.029; or

(d) Language access providers under RCW 41.56.510.

(6) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028; or

(c) Adult family home providers under RCW 41.56.029; or

(d) Language access providers under RCW 41.56.510.

(7) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(8) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(9) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(10) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(11) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(12) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(13) Any representation election for the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to providers may describe the collective bargaining rights established by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510 and agreements reached

by a petitioning union and the employer concerning the election process;

(b) The notice and ballot materials supplied to providers shall be set forth in English and any other language the agency deems reasonably necessary to conduct a fair election;

(c) The ballot materials supplied to providers shall include a card return-addressed to the commission, by which providers eligible voters can individually request notice and ballot materials in languages other than those received. Upon receipt of such a request card, the agency shall promptly supply notice and ballot materials to the eligible voter in the requested language.

(d) At least twenty-one days shall be provided between the date on which ballot materials are mailed to providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in WAC 391-25-140 through 391-25-470 shall be interpreted in light of subsection (3) of this section.

(14) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.-510.

[Statutory Authority: RCW 41.56.060, 41.56.090, and 41.58.050. WSR 10-20-172, § 391-25-051, filed 10/6/10, effective 11/6/10; WSR 08-04-058, § 391-25-051, 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, 74.39A.240 and [74.39A].270. WSR 03-03-064, § 391-25-051, filed 1/14/03, effective 2/14/03.]

WAC 391-25-070 Contents of petition. Each petition for investigation of a question concerning representation shall contain, in separate numbered paragraphs:

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

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

(3) The name, address, and telephone number of any organization which currently represents the employees involved and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(4) An indication that:

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

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

(5) Identification of:

(a) The employer's principal business;

(b) The employer department or division involved;

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

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

(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; or

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

(c) The employees in the bargaining unit no longer desire to be represented by any employee organization; 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, if any, title of the petitioner or its representative, and the date of the signature.

[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.]

WAC 391-25-090 Petition filed by employer. (1) Where an employer has been presented with one or more demands for recognition of an exclusive bargaining representative of previously unrepresented employees, it may obtain a determination of the question concerning representation 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 an employer disputes the majority status of the incumbent exclusive bargaining representative of its employees, it shall 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 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.

(3) A petition under this section shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The employer shall serve a copy of the petition (excluding any showing of interest) on each employee orga-

nization 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.]

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

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

WAC 391-25-096 Special provision—State civil service employees. (1) WAC 391-25-090 is inapplicable to bargaining units of state civil service employees.

(2) Where an employer claims that an employee organization previously certified as the exclusive bargaining representative of state civil service employees has become defunct or has abandoned representation of a bargaining unit, it may file a petition under WAC 391-25-070 to obtain a determination as to whether the employee organization continues to represent the bargaining unit. Instead of a showing of interest under WAC 391-25-110, the employer shall attach affidavits and other documentation as may be available to it to demonstrate the existence of a good faith belief that the employee organization has become defunct or has abandoned representation of the bargaining unit. The documentation provided under this section shall not include signature documents provided to the employer by employees.

(3) An employee organization named in a petition filed under this section shall be given a reasonable opportunity to respond and rebut the allegations in the petition. Ongoing activity as exclusive bargaining representative may be demonstrated by evidence showing that the employee organization has been holding meetings of its members, collecting dues, electing or appointing officers and representatives for the purposes of dealing with the employer, processing grievances, negotiating collective bargaining agreements, or similar activities for and on behalf of employees in the bargaining unit.

(4) If it is determined that the employee organization is defunct or has abandoned its responsibilities for and on behalf of the employees in the bargaining unit, the executive director shall vacate the certification of the employee organization as exclusive bargaining representative. An order issued by the executive director shall be subject to appeal under WAC 391-25-660.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.070(2). WSR 03-03-064, § 391-25-096, filed 1/14/03, effective 2/14/03.]

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

(2) The agency shall not disclose the identities of employees whose authorization cards or letters are furnished to 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 freely to express their views on the selection of a bargaining representative, the agency shall not honor any attempt 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.]

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 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.]

WAC 391-25-136 Special provision—State civil service employees. In addition to the information required by WAC 391-25-130, lists of state civil service employees provided in proceedings under RCW 41.06.340 and/or chapter

41.80 RCW shall also contain the job classification and work location of each employee. The employer shall send a copy of the list (excluding employee addresses) to all other parties in the case, at the same time as the list is sent to the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.080. WSR 03-03-064, § 391-25-136, filed 1/14/03, effective 2/14/03.]

WAC 391-25-137 Special provision—Higher education faculty. In addition to the information required by WAC 391-25-130, lists of higher education faculty provided in proceedings under chapter 41.76 RCW shall also contain the job classification and work location of each employee.

[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, § 391-25-137, filed 1/14/03, effective 2/14/03.]

WAC 391-25-140 Notice to employees—Limitations on employer actions. (1) The employer shall post a copy of the petition and a notice, in the form specified by the commission, 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 post them in conspicuous places on its premises where notices to affected employees are usually posted. The petition and notice shall remain posted until a certification or interim certification is issued in the proceeding.

(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 under this chapter.

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

(4) Where 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, any party to the proceeding may petition the commission to stay either of those obligations where 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 the failure to resume bargaining would substantially harm the petitioned-for employees and leave them without an adequate administrative remedy. A petition filed under this subsection shall be accompanied by affidavits and evidence.

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

(e) If the commission uses its authority under (b) of this subsection, any party seeking review of the commission's decision shall 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.]

WAC 391-25-150 Amendment and withdrawal. A petition may be amended or withdrawn by the petitioner at any time prior to the issuance of a notice of election and the mailing of the ballots, or under such 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.]

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

(1) After the close of the hearing on the petition;

(2) More than seven days after the filing and posting of an election agreement or cross-check agreement; or

(3) More than seven days after the posting of an investigation statement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. 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.]

WAC 391-25-190 Intervention—By organization other than incumbent. (1) An organization not covered by WAC 391-25-170 may, by motion, intervene in proceedings under this chapter and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election. The motion for intervention shall be supported by a showing of interest indicating that the intervenor has the support of ten percent or more of the employees in the bargaining unit which the petitioner claims to be appropriate. 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.

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

(a) After the close of the hearing on the petition;

(b) More than seven days after the filing and posting of an election agreement or cross-check agreement; or

(c) More than seven days after the posting of an investigation statement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. 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.]

WAC 391-25-197 Special provision—Higher education faculty. The description of bargaining unit requirement of WAC 391-25-190 is limited to a single unit per employer under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). WSR 03-03-064, § 391-25-197, filed 1/14/03, effective 2/14/03.]

WAC 391-25-210 Bargaining unit configurations. (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.

[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.]

WAC 391-25-217 Special provision—Higher education faculty. (1) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single unit per employer under chapter 41.76 RCW.

(2) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the employer-wide bargaining units under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). WSR 03-03-064, § 391-25-217, filed 1/14/03, effective 2/14/03.]

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

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

(i) The identification of the parties;

(ii) The jurisdiction of the commission;

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

(iv) The existence of a question concerning representation;

(v) The timeliness of the petition;

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

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

(viii) The list of employees eligible to vote or be considered in determining a question concerning representation, and cut-off date for eligibility; and

(ix) The method and arrangements for determining a question concerning representation.

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

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

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

(a) Immediately upon receipt of an investigation statement, the employer shall post it in conspicuous places on its premises where notices to affected employees are usually posted, and it shall remain posted for at least seven days.

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

(3) When it appears that all conditions precedent to an election or cross-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.

[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.]

WAC 391-25-229 Special provision—Symphony musicians. In addition to the information required by WAC 391-25-220, 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 41.58.050 and 49.39.060. WSR 10-20-172, § 391-25-229, filed 10/6/10, effective 11/6/10.]

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

(1) An election agreement shall include:

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

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

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

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

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

(f) A list containing the names of the employees eligible to vote in the election and the eligibility cut-off date for the election. If the election is to be conducted by mail ballot, the list shall include the last known address of each of the employees eligible to vote. If no eligibility cut-off date is specified by the parties, the eligibility cut-off date shall be the date on which the election agreement is filed;

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

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

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

(3) Upon the filing of an election agreement, the executive director or designee shall determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute, and whether other conditions precedent to an election are met. The agency shall proceed to conduct an election, if appropriate, or shall notify the parties of the reasons for rejection of the election agreement.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-230, 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, § 391-25-230, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-230, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.-080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 90-06-072, § 391-25-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-046 (Order 80-5), § 391-25-230, filed 9/30/80, effective 11/1/80.]

WAC 391-25-250 Cross-check agreements. Where only one organization is seeking certification as the representative of unrepresented employees, and the employer and organization desire an expedited certification in lieu of a voluntary recognition, they may enter into a cross-check agreement.

(1) A cross-check agreement shall include:

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

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

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

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

(e) A list containing the names of the employees in the bargaining unit;

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

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

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

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

(3) Upon the filing of a cross-check agreement, the executive director or designee shall determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute, and whether other conditions precedent to a cross-check are met. The agency shall proceed with the cross-check of records, if appropriate, or shall notify the parties of the reasons for rejection of the cross-check agreement. The cross-check may be conducted at any time following the execution of a cross-check agreement; but no certification shall be issued until seven days have elapsed following the filing and posting of the cross-check agreement. Where a motion for intervention is timely filed and granted, no certification shall be issued on the basis of the cross-check.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-250, 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, § 391-25-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-250, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-250, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.-080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. WSR 90-06-072, § 391-25-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-250, filed 9/30/80, effective 11/1/80.]

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

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

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

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

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 while reserving the eligibility issues for subsequent determination.

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

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

(b) The individuals whose eligibility is disputed shall be listed as challenged in a cross-check, and any authorizations signed by those individuals shall not be tallied.

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

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

(b) If an organization is entitled to certification regardless of the reserved eligibility issues, a certification shall be issued, but the case shall 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 certification is issued under (b) of this subsection.

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

(3) All eligibility issues reserved for subsequent determination under this section shall 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.]

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 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.]

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 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.]

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

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. 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.]

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

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

(b) The hearing officer shall ascertain the respective positions of the parties, 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 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. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-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;

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

(c) 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 motion at such 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.]

WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed. (1) The executive director may suspend the processing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings, where:

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

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

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

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

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, and shall issue a direction of election, dismiss the petition or make other disposition of the matter.

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

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

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

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

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

(i) If the executive director or his or her designee has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or hearing officer has committed probable error and the 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 designee, or hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double spaced, 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 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 the final order of the agency, with the same force and effect as if issued by the commission.

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

WAC 391-25-391 Special provision—Public employees. (1) Where only one organization is seeking certification as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that the organization has been authorized by in excess of seventy percent of the employees to act as their representative for the purposes of collective bargaining, the executive director may issue a direction of cross-check.

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

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

WAC 391-25-396 Special provision—State civil service employees. (1) In addition to the cross-check of records permitted by WAC 391-25-391 and the procedures under WAC 391-25-410, where only one organization is seeking certification as the representative of unrepresented employees covered by chapters 41.06 and 41.80 RCW, the executive director may issue a direction of cross-check utilizing the procedures outlined in WAC 391-25-410 if the showing of interest submitted in support of the petition indicates that the petitioning organization has been authorized by a majority of the employees to act as their representative for the purposes of collective bargaining, provided:

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 cross-check election under this rule;

(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 pur-

poses of cross-check of records. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

(2) An authorization card that fails to comply with subsection (1) of this section shall be invalid for purposes of initiating a cross-check of records under this rule.

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

[Statutory Authority: RCW 41.58.05 [41.58.050], 41.80.080. WSR 08-11-125, § 391-25-396, filed 5/21/08, effective 6/21/08. 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, § 391-25-396, filed 1/14/03, effective 2/14/03.]

WAC 391-25-399 Special provision—Symphony musicians. WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW.

[Statutory Authority: RCW 41.58.050 and 49.39.060. WSR 10-20-172, § 391-25-399, filed 10/6/10, effective 11/6/10.]

WAC 391-25-410 Cross-check of records. (1) Where a cross-check of records is to be conducted to determine a question concerning representation, the organization shall furnish to the agency original or legible copies of individual authorization cards or letters signed and dated by employees in the bargaining unit no more than ninety days prior to the filing of the petition. Authorization documents shall indicate that the employees authorize the named organization to represent them for the purposes of collective bargaining.

(2) The agency shall honor a valid revocation of authorization contained in an individual card or letter signed by the employee and furnished to the agency by the employee. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

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

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

(5) Where the organization files a disclaimer or a request for election after the commencement of the cross-check, the cross-check shall be terminated and the organization shall not seek to be certified in the bargaining unit for a period of at least one year.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060. WSR 01-14-009, § 391-25-410, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-410, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-410, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.060. WSR 90-06-072, § 391-25-410, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-410, filed 9/30/80, effective 11/1/80.]

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

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

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

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

WAC 391-25-416 Special provision—State civil service employees. As to state civil service employees, authorization documents signed and dated by employees in the bargaining unit no more than six months prior to the filing of the petition shall be honored for purposes of WAC 391-25-410.

[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, § 391-25-416, filed 1/14/03, effective 2/14/03.]

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

(1) Where 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 be conducted.

(2) Where 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 indicate support for the merger of units, 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 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 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.]

WAC 391-25-426 Special provision—State civil service employees. An employee organization that represents two or more bargaining units of state civil service employees may obtain a merger of those units by filing a petition under WAC 391-25-420 (2)(a). If the merged unit is found to be appropriate under WAC 391-25-420 (2)(c)(i) and (ii), the employee organization shall be certified as exclusive bargaining representative without need for unit determination elections.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 41.80.070(3). WSR 03-11-029, § 391-25-426, filed 5/15/03, effective 6/15/03.]

WAC 391-25-427 Special provision—Higher education faculty. The unit determination election procedures in WAC 391-25-420 are inapplicable to the employer-wide bargaining units under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). WSR 03-03-064, § 391-25-427, filed 1/14/03, effective 2/14/03.]

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

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

(2) The deadline for return of mail ballots or the date(s), hours and polling place(s) for an on-site election.

(3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election, 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 or at the deadline for return of mail ballots.

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

Notices of the election shall be posted for at least seven days, and shall remain posted until a tally of ballots has been issued. The day of posting shall be counted, but the day on which the polls are opened for an on-site election shall not be counted.

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

WAC 391-25-436 Special provision—State civil service employees. (1) While a notice of election is posted under WAC 391-25-430, 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 they do not disrupt operations. However, if employees are permitted to discuss nonwork subjects or solicit other employees in work areas, the employer cannot discriminatorily regulate employee discussions or solicitations.

(2) 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.

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

[Statutory Authority: RCW 41.58.050, 41.80.080. WSR 08-15-032, § 391-25-436, filed 7/9/08, effective 8/9/08.]

WAC 391-25-440 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, which it already represents, under this chapter and the relevant statute, the organization may petition for a self-determination election to ascertain the employees' desire to be included in its existing bargaining unit.

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

(a) Demonstrate that it has the support of at least thirty percent or more 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 the petitioning organization seeks to merge the unrepresented employees into; and

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

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

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or his or her 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 under WAC 391-25-140 shall affirmatively indicate that the petitioning organization seeks to merge the petitioned-for employees into 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 under this chapter for the petitioned-for employees to ascertain whether they desire to become part of the existing unit.

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

(b) Cross-check procedures under WAC 391-25-391 and 391-25-396 are applicable to this section.

(c) In such an 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 voters vote against inclusion in the existing unit, they are considered as indicating a desire to remain unrepresented.

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

(i) That it has support from at least thirty 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 under this chapter and the appropriate statute, 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) In the event the requirement of both (a)(i) and (ii) of this subsection are met, the election shall be for representation by the petitioner as part of the larger unit proposed by the petitioner, or representation by the intervener as part of the larger unit proposed by the intervener, or no representation.

(6) In the event a petition for representation of the same employees sought to be added to a larger unit by the petitioner under this section is filed pursuant to WAC 391-25-010 or 391-25-012, along with the requisite thirty percent showing of interest, and the petitioned-for unit is appropriate under the applicable statue, then the self-determination election petition filed under this section shall be dismissed. If either of those requirements is not met, the petition filed pursuant to WAC 391-25-010 or 391-25-012 will be dismissed and the original self-determination election petition processed in accordance with this section.

(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 within the previous twelve months will not bar the filing and processing of a petition under this rule.

(b) The alteration of the composition of the existing appropriate bargaining unit as a result of 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(2).

[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, § 391-25-440, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070. WSR 08-17-119, § 391-25-440, filed 8/20/08, effective 9/20/08.]

WAC 391-25-450 Disclaimers. Prior to the issuance of a notice of election and the mailing of 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 not seek to be certified in the bargaining unit, or 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.]

WAC 391-25-470 Mail ballot election procedures—Electioneering—Objectionable conduct. The executive director shall have discretion to conduct elections by mail ballot procedures designed to preserve the secrecy of employee voting. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. A notice and ballot materials shall be mailed by the agency to each eligible voter, and no less than fourteen days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots.

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

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

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

(c) The use of forged documents is prohibited.

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

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

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

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period beginning on the scheduled date for the issuance of ballots to employees and continuing through the tally of ballots. Other electioneering allowed under (a) through (f) of this subsection is permitted during that period.

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 01-14-009, § 391-25-470, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-470, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.-090, 41.59.110, 41.56.060 and 41.59.070. WSR 90-06-072, § 391-25-470, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.-050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-470, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-470, filed 9/30/80, effective 11/1/80.]

WAC 391-25-476 Special provision—State civil service employees. The requirement in WAC 391-25-470(2) that lists of voters be surrendered shall not apply to elections concerning state civil service employees covered by chapter 41.06 RCW. Upon request, the agency shall provide the parties involved in the election with the names of employees who voted.

[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, § 391-25-476, filed 1/14/03, effective 2/14/03.]

WAC 391-25-490 On-site election procedures—Electioneering—Objectionable conduct. The executive director shall have discretion to conduct an election by on-site balloting procedures designed to preserve the secrecy of employee voting, if the circumstances of a particular case indicate that an on-site election would be more efficient or appropriate than a mail ballot election. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. Absentee balloting shall not be allowed.

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

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

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

(c) The use of forged documents is prohibited.

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

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

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

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period beginning twenty-four hours before the scheduled time for the opening of the polls and continuing through the tally of ballots. Other electioneering allowed under (a) through (f) of this subsection is permitted during that period.

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

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 01-14-009, § 391-25-490, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-490, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. WSR 90-06-072, § 391-25-490, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-490, filed 9/30/80, effective 11/1/80.]

WAC 391-25-496 Special provision—State civil service employees. If the executive director conducts an election involving state civil service employees by on-site balloting procedures, absentee ballots shall be allowed as prescribed in this section.

(1) Upon the request of an individual employee, the agency shall provide a notice and absentee ballot to the individual employee.

(2) To be counted, the absentee ballot must be received at the Olympia office of the commission:

(a) Directly from the employee or from the employee via the United States Postal Service; and

(b) Prior to the close of business on the last day the polls are open for the on-site election.

(3) Whenever absentee ballots are issued, the tally of ballots shall be delayed for one or more days after the last day on which the polls are open for the on-site election, and shall

then be conducted in the commission's Olympia office in a manner which preserves the secrecy of the absentee ballots.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.080. WSR 03-03-064, § 391-25-496, filed 1/14/03, effective 2/14/03.]

WAC 391-25-510 Challenged ballots. Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in the election. No person shall be denied the right to cast a challenged ballot. The election officer shall not have authority to resolve challenges, and the ballot of the challenged voter shall be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of the voter. The ballot shall not be opened until the challenge is resolved. Any 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 resolved. If the challenged ballots are insufficient in number to affect the results of the election, they shall be impounded and no ruling shall be made. If the challenged ballots are sufficient in number to affect the results of the election, the election officer shall ascertain the position of each party as to each challenged ballot and shall include the information in his or her report. If challenges raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-25-670.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. 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.]

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.

[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.]

WAC 391-25-531 Special provision—Public employees. Where there are three or more choices on the ballot, representation elections for employees covered by chapter 41.56 RCW shall be decided by a majority of those eligible to vote in the election.

[Statutory Authority: RCW 41.56.060, 41.56.090, and 41.58.050. WSR 10-20-172, § 391-25-531, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.070. WSR 90-06-072, § 391-25-531, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-531, filed 9/30/80, effective 11/1/80.]

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. 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.]

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

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 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.]

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

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

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

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

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. 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.]

WAC 391-25-610 Procedure where no objections are filed. If no objections are filed within the time set forth above, and if any challenged ballots are insufficient in number to affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall 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.]

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

(1) If the objections and any responses indicate there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law, the commission may issue a summary judgment in the matter.

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

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

(b) The rules relating to hearings on petitions shall govern hearings on objections, except that the scope of the hearing shall be limited to matters relevant to the disposition of the objections.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 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.]

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 days following the later of:

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

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

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

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

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

(4) A party filing a brief under this section must limit its total length to twenty-five 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 complex issues raised by the objections; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such 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, § 391-25-650, 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.]

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

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

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

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

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

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

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

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

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

(9) A party filing a brief under this section must limit its total length to twenty-five 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 complex issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such 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.]

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. 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.]

WAC 391-25-674 Special provision—Marine employees. If there are objections under WAC 391-25-590 or an order is appealed under WAC 391-25-660 involving employees covered by chapter 47.64 RCW, the marine employees' commission shall act in place of the commission, and the entire record in the proceedings shall be transmitted to the marine employees' commission members. The marine employees' commission may request the parties to appear before it to make oral arguments as to any or all of the issues in the matter. The marine employees' commission shall determine the objections or appeal and any challenged ballots referred to the marine employees' commission pursuant to WAC 391-25-510, and shall issue appropriate orders.

[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-25-674, filed 2/15/12, effective 3/17/12.]