

Chapter 391-55 WAC

IMPASSE RESOLUTION CASE RULES

Last Update: [2/15/12](#)

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 391-55-033 Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-033, filed 9/30/80, effective 11/1/80.]
Repealed by WSR 88-12-055 (Order 88-08), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.
- 391-55-260 Uniformed personnel—Central filing of agreements.
[Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049

(Order 80-8), § 391-55-260, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-360 Educational employees—Central filing of agreements.

[Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-360, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-400 State patrol personnel—Fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-400, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-400, filed 9/30/80, effective 11/1/80.] Repealed by WSR

96-07-105, filed 3/20/96, effective 4/20/96.

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

391-55-410 State patrol personnel—Selection of fact finder.

[Statutory Authority: RCW 28B.52.080, 41.58.050,
41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-
08), § 391-55-410, filed 5/31/88. Statutory
Authority: RCW 28B.52.080, 41.56.040, 41.58.050,
41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8),
§ 391-55-410, filed 9/30/80, effective 11/1/80.]
Repealed by WSR 96-07-105, filed 3/20/96, effective
4/20/96. Statutory Authority: RCW 28B.52.080,
41.56.090, 41.59.110 and 41.58.050.

391-55-415 State patrol personnel—Conduct of fact finding
proceedings. [Statutory Authority: RCW 28B.52.080,
41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055
(Order 88-08), § 391-55-415, filed 5/31/88.
Statutory Authority: RCW 28B.52.080, 41.56.040,

41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049
(Order 80-8), § 391-55-415, filed 9/30/80, effective
11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96,
effective 4/20/96. Statutory Authority: RCW
28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-420 State patrol personnel—Submission of proposals for
fact finding. [Statutory Authority: RCW 28B.52.080,
41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055
(Order 88-08), § 391-55-420, filed 5/31/88.
Statutory Authority: RCW 28B.52.080, 41.56.040,
41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049
(Order 80-8), § 391-55-420, filed 9/30/80, effective
11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96,
effective 4/20/96. Statutory Authority: RCW
28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-425 State patrol personnel—Fact finding hearing.
[Statutory Authority: RCW 28B.52.080, 41.58.050,
41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-

08), § 391-55-425, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-425, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-430 State patrol personnel—Order of proceedings and evidence. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-430, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-430, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-435 State patrol personnel—Fact finding in the absence of a party. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-435, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-435, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-440 State patrol personnel—Closing of fact finding hearings. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-440, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-440, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96,

effective 4/20/96. Statutory Authority: RCW

28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-445 State patrol personnel—Findings of fact and

recommendations. [Statutory Authority: RCW

28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR

88-12-055 (Order 88-08), § 391-55-445, filed

5/31/88. Statutory Authority: RCW 28B.52.080,

41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR

80-14-049 (Order 80-8), § 391-55-445, filed 9/30/80,

effective 11/1/80.] Repealed by WSR 96-07-105, filed

3/20/96, effective 4/20/96. Statutory Authority: RCW

28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-450 State patrol personnel—Responsibility of parties

after fact finding. [Statutory Authority: RCW

28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR

88-12-055 (Order 88-08), § 391-55-450, filed

5/31/88. Statutory Authority: RCW 28B.52.080,

41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR

80-14-049 (Order 80-8), § 391-55-450, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-455 State patrol personnel—Expenses of fact finding.

[Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-455, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-455, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-455, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-500 Marine employees-Interest arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-500, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-505 Marine employees-Referral for mediation. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-505, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-055 (Order 88-08), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.

391-55-510 Marine employees-Intervention and consolidation of proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR

80-14-049 (Order 80-8), § 391-55-510, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-515 Marine employees—Conduct of interest arbitration proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-515, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-520 Marine employees—Submission of issues for arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-520, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order

83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-525 Marine employees—Hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-525, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-530 Marine employees—Order of proceedings and evidence. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-530, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-535 Marine employees—Arbitration in the absence of a party. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-535, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-540 Marine employees—Closing of hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-540, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-545 Marine employees—Interest arbitration award.
[Statutory Authority: RCW 28B.52.080, 41.56.040,

41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049
(Order 80-8), § 391-55-545, filed 9/30/80, effective
11/1/80.] Repealed by WSR 83-24-035 (Order 83-05),
filed 12/1/83, effective 1/1/84. Statutory
Authority: RCW 34.04.022, 41.58.050, 41.56.090,
41.59.110 and 28B.52.080.

391-55-560 Marine employees—Central filing of agreements.

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

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

~~WAC 391-55-001 Scope-Contents-Other rules.~~ This chapter

governs proceedings before the public employment relations commission relating to the resolution of impasses occurring in collective bargaining under all chapters of the Revised Code of Washington (RCW) administered by the commission. To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250 and found in chapter 10-08 WAC, these rules shall prevail.~~The provisions of this chapter should be read in conjunction with the provisions of:~~

~~(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

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

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

Commented [CCJ(1): Proposed revisions eliminate unnecessary cross-references to other WAC chapters and clarifies relationship between impasse resolution rules and model rules.

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

~~(5) Chapter 391-65 WAC, which regulates grievance arbitration proceedings.~~

~~(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.~~

In the event of a conflict between a general rule in Chapter 391-08 and a special rule in this chapter applicable to a particular proceeding, the special rule shall govern.

~~[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-55-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-55-001, filed 6/22/01, effective 8/1/01; WSR 99-14-060, § 391-55-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]~~

~~WAC 391-55-002 Sequence and numbering of rules Special provisions. This chapter of the Washington Administrative Code~~

Commented [CCJ(2)]: The proposed strike of this rule eliminates an unnecessary table of contents detailing the numbering process for the rules in this chapter.

~~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.~~

~~Special provisions relating to bargaining units eligible for interest arbitration are set forth beginning with WAC 391-55-200.~~

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

~~(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 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, 41.56.090, 41.58.050, 41.56.065 [41.58.065], 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 12-05-066, § 391-55-002, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 10-20-172, § 391-55-002, 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, § 391-55-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-002, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-002, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-002, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-002, filed 9/30/80, effective 11/1/80.}~~

WAC 391-55-010 Impasses in contract negotiations-Request

~~for mediation-Service.~~ A request for mediation may be made

~~through the agency's on-line e-filing system, by email, in~~

~~writing, by electronic telefacsimile transmission, or by~~

telephone, but shall be confirmed in writing if made by

Commented [CJ(3): Proposed revisions update filing procedures and required information for contract mediation requests.

telephone. The original request shall be submitted through the agency's on-line e-filing system or to the commission's Olympia office, as required by WAC 391-08-120(2). If the request is not submitted jointly, the party submitting the request shall serve a copy, as required by WAC 391-08-120 (3) and (4), on the other party to the dispute. The party or parties requesting mediation shall provide the following information to the agency:

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

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

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

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

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

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

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

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

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

(8) The history of the current negotiations, including at least the number of meetings held, the date of the first meeting, and whether both parties concur in the request for mediation.

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

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

(11) Or any other information contained in the "Contract Mediation Request" form found on the agency's website or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060 and 41.56.100. WSR 99-14-060, § 391-55-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW

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

WAC 391-55-020 Grievance mediation-Request for grievance mediation-Service. A request for appointment of a grievance

mediator may be made through the agency's on-line e-filing system, by email, or in writing ~~or by electronic telefacsimile transmission~~. The original request shall be submitted through the agency's on-line e-filing system or to the commission's Olympia office, as required by WAC 391-08-120(2). If the request is not submitted jointly, the party submitting the request shall serve a copy, as required by WAC 391-08-120 (3) and (4), on the other party to the collective bargaining agreement under which the dispute arises. The party or parties requesting grievance mediation shall provide the following information to the agency:

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

Commented [CCJ(4): Proposed revisions update filing procedures and the required information for grievance mediation requests.

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

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

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

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

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

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

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

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

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

(3) ~~Designation of the request as:~~

~~(a) A request for appointment of a specific member of the agency staff as grievance mediator, if desired; or~~

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

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

(5) Or any other information contained in the "Grievance Mediation Request" form found on the agency's website or as required through the agency's e-filing system.

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

WAC 391-55-030 Assignment of mediator. (1) Upon

submission of a request under WAC 391-55-010 or 391-55-020

(3) ~~(a)~~, a member of the agency staff shall be assigned as mediator at the discretion of the Executive Director. If the

Commented [CCJ(5): Proposed revision clarifies that mediator assignments are at the discretion of the E.D. The new subsection (2) is applicable to bargaining units that negotiate with the State under the biennium process and are eligible for interest arbitration.

parties have stipulated to the names of one or more persons who are acceptable to both parties as mediator, their request shall be considered in making the assignment.

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

(2) For negotiations involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), in the event an agreement has not been reached by June 1st of the year in which negotiation occurred, a mediator shall be assigned. The parties are encouraged to meet with the mediator as soon as practicable.

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

WAC 391-55-032 Special provision—Educational employees.

Upon submission of a unilateral request for mediation, the

executive director shall consider the position of the party other than the party making the request, and shall evaluate whether the parties have exchanged and considered the proposals of one another and whether the intervention of the agency will have a beneficial impact on the negotiating process. Prior to making this determination, the executive director or a member of the agency staff may make an on-site investigation and may engage in conciliation under the general authority conferred on the commission by RCW 41.58.020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator.

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

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

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

Commented [CJ]6: Many parties already supply the agency with written proposals and other supporting documents at the time of filing a request for mediation; the proposed rule is designed to encourage the maintenance of this existing practice.

in dispute as well as any written material supporting the identified proposals.

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

WAC 391-55-070 Function of mediator. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.030, 41.80.090. WSR 08-04-059, § 391-55-070, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040.

WSR 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

~~WAC 391-55-071 Special provision State patrol personnel.~~

~~In the case of mediation involving officers of the Washington state patrol appointed under RCW 43.43.020, the mediator shall not consider any matters relating to retirement benefits or health care benefits or other employee insurance benefits.~~

~~[Statutory Authority: RCW 41.58.050, 41.56.090. WSR 08-11-125, § 391-55-071, filed 5/21/08, effective 6/21/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-071, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-071, filed 5/31/88.]~~

~~WAC 391-55-0715 Special provision Public employees.~~

~~In cases involving mediation conducted under RCW 28A.657.050, the mediator shall ensure that:~~

~~(1) Representatives from all bargaining units affected by the state board of education required action plan are provided an opportunity to participate in a single mediation with the employer; and~~

Commented [CCJ(7): The proposed strike eliminates language in a rule that is largely duplicative of the statutory restriction on bargaining subjects for members of the Washington State Patrol in RCW 41.56.473.

Commented [CCJ(8): The proposed strike is based on the expiration of provisions within the original enabling statute cross-referenced in this rule that are no longer applicable.

~~(2) The scope of the mediation is limited to those terms and conditions of employment that are impacted by the state board of education required action plan.~~

~~[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-0715, filed 10/6/10, effective 11/6/10.]~~

~~**WAC 391-55-072 Special provision Educational employees.**~~

~~In cases involving mediation conducted under RCW 28A.657.050, the mediator shall ensure that:~~

~~(1) Representatives from all bargaining units affected by the action plan are provided an opportunity to participate in a single mediation with the employer; and~~

~~(2) The scope of the mediation is limited to those terms and conditions of employment that are impacted by the state board of education required action plan.~~

~~[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-072, filed 10/6/10, effective 11/6/10.]~~

WAC 391-55-090 Confidential nature of mediation.

Mediation meetings shall not be open to the public. Confidential information acquired by a mediator shall not be disclosed to

Commented [CCJ(9): The proposed strike is based on the expiration of provisions within the original enabling statute cross-referenced in this rule that are no longer applicable.

others outside of the mediation process for any purpose, and a mediator shall not give testimony about the mediation in any legal or administrative proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 5.60.072. WSR 99-14-060, § 391-55-090, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-090, filed 9/30/80, effective 11/1/80.]

WAC 391-55-110 Dispute resolution panel—Membership. The

Commented [CCJ(10): Proposed changes are designed to more closely align panel membership requirements with other major organizations, such as AAA and FMCS.

commission shall establish and maintain a panel of individuals qualified to serve in an impartial capacity in the resolution of labor disputes.

(1) Applicants for membership on the dispute resolution panel shall demonstrate minimum background and experience equal to the minimum qualifications for the working level positions on the professional staff of the commission:

(a) A master's degree in labor relations, personnel management or industrial relations or closely allied field, or a law degree; and

(b) At least three years of experience in collective bargaining with major work assignments in negotiations, contract administration or related work as a union or management representative, mediator, arbitrator or educator in the above areas; and

(c) Additional qualifying experience shall substitute, year for year, for education.

(2) Applicants for membership on the dispute resolution panel shall furnish at least five letters of recommendation supporting their acceptability as an impartial from:

(a) At least ~~one~~ two management representative; and

(b) At least ~~one~~ two union representative; and

(c) At least one impartial arbitrator, mediator or labor relations administrative agency official.

(d) All letters of recommendation submitted under subsections (a) through (c) of this section shall be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or

contain recent contact information for the author of the letter of recommendation.

(3) Applicants ~~who desire to be referred for interest arbitration proceedings~~ shall demonstrate their experience as an impartial in at least five grievance arbitration, fact finding or interest arbitration cases, by submitting copies of arbitration awards which can be provided, upon request, to parties selecting an interest arbitrator.

(4) Applicants for membership on the dispute resolution panel shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications and affiliations. All information submitted shall be subject to administrative verification.

(5) Applications of persons appearing to be qualified for membership on the panel shall be forwarded to the commission for consideration and action. The commission shall review each application submitted to it, together with the supporting letters of recommendation, and shall notify the applicant of the determination made.

(6) Whenever it appears to the commission that an applicant or member of the dispute resolution panel has failed or refused to comply with applicable statutes, rules and ethical standards, the application shall be rejected or the member shall be removed from the dispute resolution panel. A member shall also be removed from the panel if he or she has:

(a) Ceased accepting appointments as an impartial in the resolution of labor disputes; or

(b) Failed to keep the agency informed of their current address and telephone number; or

(c) Failed to follow ethical standards and procedures as set forth in the "Code of Professional Responsibility for Arbitrators of Labor Management Disputes" as approved by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association.

(7) Persons referred from the dispute resolution panel shall be impartial. No active member of the dispute resolution panel may serve in any capacity as an advocate or representative for either labor or management in labor relations matters. Any member of the panel who intends to engage in advocacy work shall

notify the executive director and shall be placed on inactive status while their advocacy work continues.

(8) Upon appointment to the dispute resolution panel by the commission, the panel member may be placed under contract pursuant to chapter 39.29 RCW. Only persons listed on the panel shall be compensated by the agency under a personal service contract.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 10-20-172, § 391-55-110, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-110, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-110, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-110, filed 9/30/80, effective 11/1/80.]

WAC 391-55-120 Dispute resolution panel-Referral and selection procedures. (1) All referrals from the dispute resolution panel shall be by random selection among the panel members eligible for the type of proceeding involved, subject to the following:

(a) If the parties do not specify the number of names requested, the agency shall supply seven names.

(b) Where the parties request a specific number of names, the agency shall supply the number requested plus two additional names for use as alternates to reduce the potential need for second lists, or for use as agreed by the parties.

(c) The agency shall furnish biographical information, including background, qualifications and experience, on each of the arbitrators on the list supplied to the parties.

(d) The agency shall supply the parties with a second list, upon submission of their joint written request.

(2) The parties may use any method agreed upon for selecting an impartial from the list provided by the agency. In the absence of agreement on any other method, they shall alternately strike names from the list, with the order of striking determined by lot.

(3) All contacts and arrangements between the parties and a selected dispute resolution panel member are the responsibility of the parties. The fees and travel expenses of the dispute

resolution panel member shall be paid by the parties under applicable rules or as agreed by the parties.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-120, filed 7/1/99, effective 8/1/99.]

WAC 391-55-130 Disclosure. Prior to accepting the appointment, or as soon as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity in a dispute resolution proceeding under the jurisdiction of the commission shall disclose to the parties and to the executive director any circumstances likely to create an appearance of bias or which might disqualify him or her from serving in the impartial capacity. Employment of the person or any member of his or her immediate family by any party shall be disqualifying. Each party to the proceeding shall immediately notify the executive director and the appointee or selectee whether it is willing to waive disqualification. If either party declines to waive the disqualification, the appointment shall be vacated.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-130, filed 7/1/99, effective

8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-130, filed 9/30/80, effective 11/1/80.]

WAC 391-55-150 Vacancies. If any person serving in an impartial capacity in dispute resolution proceedings under the jurisdiction of the commission should resign, die, withdraw, refuse or be unable to serve, or should be or become disqualified to perform the duties of the office, the executive director shall declare the office vacant. The vacancy shall be filled in the same manner as an original appointment.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-150, filed 9/30/80, effective 11/1/80.]

WAC 391-55-200 Interest arbitration-Certification of

issues. (1) If a dispute involving a bargaining unit eligible

for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030 (~~714~~), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2) (c)

has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts

Commented [CJ(11): The proposed revision is a substantive change to the certification process for bargaining units that negotiate with the State as part of the biennium process and are eligible for interest arbitration. Certifications would exclude scope of bargaining issues for which there is a dispute over the subject being mandatory or not unless the proposal was made during the applicable window period outlined in the new proposed rule in -55-2651.

will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and ~~serve on~~ the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465

(1) (b), 41.56.475 (2) (b), or 41.56.492 (2) (b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

(4) For certification involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270(2)(c), the executive director shall exclude from

certification any bargaining scope issues for which there is a dispute over the mandatory nature of the proposal(s) unless the proposal has been submitted by the party prior to the commencement of the window period detailed in WAC 391-55-2651.

[Statutory Authority: RCW 41.56.090, 41.58.050, 41.58.065, 47.64.300, and 74.39A.270. WSR 12-05-066, § 391-55-200, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.56.090, 41.58.050, and 74.39A.270. WSR 10-20-172, § 391-55-200, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.450, [41.56].475, [41.56].492 and 74.39A.270. WSR 03-03-064, § 391-55-200, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450, 41.56.475 and 41.56.492. WSR 99-14-060, § 391-55-200, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450 and [41.56].492. WSR 96-07-105, § 391-55-200, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

WAC 391-55-201 ~~Special provision—Certification of issues—~~

Public employees. (1) If a dispute involving negotiations conducted under RCW 28A.657.050 and WAC 391-55-0715 have not been settled by May 15th of the year in which mediation

occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located.

(2) The executive director shall review the lists of issues submitted by the parties, including any list of issues submitted under WAC 391-55-072.

(a) The executive director shall exclude from certification any issues that have not been mediated.

(b) The executive director shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" to the superior court.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-201, filed 10/6/10, effective 11/6/10.]

WAC 391-55-202 Special provision—Certification of issues—Educational employees. (1) If a dispute involving negotiations conducted under RCW 28A.657.050 and WAC 391-55-072 have not been settled by May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a

decision by the superior court in the county where the school district is located.

(2) The executive director shall review the lists of issues submitted by the parties, including any list of issues submitted under WAC 391-55-0715.

(a) The executive director shall exclude from certification any issues that have not been mediated.

(b) The executive director shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" to the superior court.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-202, filed 10/6/10, effective 11/6/10.]

WAC 391-55-205 Interest arbitration-Appointment of partisan arbitrators. For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.475, 41.56.492, 41.56.496 and ~~W~~ within seven days following the issuance of a certification of issues for interest arbitration under WAC 391-55-200, each party shall name one person who is available and willing to serve as its member of

Commented [CJ(12): The proposed revision to the existing appointment rule is in line with other revisions designed to create separate interest arbitration procedures for bargaining units that negotiate with the State and all other interest arbitration eligible units. A new subsection would allow parties to jointly waive the written procedures on the appointment of partisan arbitrators.

the arbitration panel, and shall notify the opposite party and the executive director of the name, address and telephone number of the partisan arbitrator. The partisan arbitrators shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairperson of the arbitration panel.

(1) The use of partisan arbitrators shall be deemed waived if neither party has notified the executive director of its appointee within fourteen days following the issuance of a certification of issues for interest arbitration, and the parties' principal representatives shall then select the neutral chairperson.

(2) A party which has designated a partisan arbitrator may substitute another person as its partisan arbitrator, upon notice to the other party and the executive director.

(3) By mutual agreement, the parties may waive the provisions in this rule and the appointment of partisan arbitrators.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-205, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-205, filed

3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-205, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-205, filed 9/30/80, effective 11/1/80.]

WAC 391-55-210 Interest arbitration—Selection of neutral chairperson. (1) For a dispute involving a bargaining unit

eligible for interest arbitration under RCW 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, ~~if the~~ parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve, and shall notify the executive director of the identity of the chairperson.

~~(2) If the parties agree to have the commission appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the commission.~~ Upon the submission of a

Commented [CCJ(13): The proposed revision to the existing appointment rule is in line with other revisions designed to create separate interest arbitration procedures for bargaining units that negotiate with the State and all other interest arbitration eligible units. Some outdated language on the selection of a neutral chairperson from the commission staff is proposed to be removed. An allowance is made to permit the parties to waive the outlined procedures by mutual agreement.

request ~~in compliance with this subsection~~, the executive director shall appoint a neutral chairperson from the commission staff.

(3) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the commission, the Federal Mediation and Conciliation Service or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall proceed forthwith to request a panel of at least five arbitrators specifying: "For interest arbitration proceedings under RCW 41.56.450." Referrals and selection from the commission's dispute resolution panel shall be as provided in WAC 391-55-120. Referrals and selection from other panels shall be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(4) If the parties have not notified the executive director of their selection of a neutral chairperson within twenty-eight days after certification of issues under WAC 391-55-200, the parties shall be deemed to have waived the procedures in

subsections (1) through (3) of this section. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson shall be selected as provided in WAC 391-55-120 unless the parties notify the executive director that by mutual agreement they have determined an alternative process for selecting a neutral chairperson.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-210, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-210, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-210, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-210, filed 9/30/80, effective 11/1/80.]

~~WAC 391-55-211 Special Provision- Interest arbitration- Selection of neutral chairperson for State.~~ (1) Preceding the commencement of bargaining for units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2) (c), but no later than February 1st of each even-numbered year, the parties shall utilize the following procedure to select a neutral chairperson unless an alternative process has been mutually agreed upon by the parties:

Commented [CCJ(14): This is a newly proposed rule to address the unique circumstances for selecting a neutral chairperson for interest arbitrations involving the State. The process centers around February 1st of each even-numbered year as the latest time to commence the selection procedures outlined in the rule unless an alternative process is mutually agreed upon by the parties.

(a) If the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve, and shall notify the executive director of the identity of the chairperson.

(b) If the parties agree to have the commission appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the commission. Upon the submission of a request in compliance with this subsection, the executive director shall appoint a neutral chairperson from the commission staff.

(c) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the commission, the Federal Mediation and Conciliation Service or the American Arbitration Association will supply the list of

arbitrators. If the choice of agency is agreed, either party or the parties jointly shall proceed forthwith to request a panel of at least five arbitrators specifying: "For interest arbitration proceedings under RCW 41.56.450." Referrals and selection from the commission's dispute resolution panel shall be as provided in WAC 391-55-120. Referrals and selection from other panels shall be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(d) If the parties have not notified the executive director of their selection of a neutral chairperson within twenty-eight days after February 1st of each even-numbered year, the parties shall be deemed to have waived the procedures in subsections (1) through (3) of this section. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson shall be selected as provided in WAC 391-55-120.

(2) Once a neutral chairperson is selected, the parties shall work with the neutral chairperson to select a mutually agreeable hearing date(s) and location. This information shall

be transmitted to the executive director within thirty days of it being finalized.

WAC 391-55-215 Interest arbitration—Conduct of proceedings—Waiver of objections. Proceedings shall be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-215, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-215, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-215, filed 9/30/80, effective 11/1/80.]

WAC 391-55-220 Interest arbitration—Submission of proposals for arbitration. At least fourteen days before the date of the hearing, or as soon as practicable if the date between certification and hearing is less than fourteen days, each party shall submit to the members of the panel and to the

Commented [CJ(15): The proposed revision is designed to acknowledge that in certain circumstances, particularly in negotiations with the State, a fourteen day submission requirement is not attainable.

other party written proposals on all of the issues it intends to submit to arbitration. Parties shall not be entitled to submit issues which were not among the issues certified under WAC 391-55-200.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-220, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-220, filed 9/30/80, effective 11/1/80.]

~~WAC 391-55-225 Interest arbitration—Prehearing conference~~

Hearing. (1) The neutral chairperson may, upon his or her own motion or upon request of a party, convene a prehearing conference or conferences.

(a) The purpose or purposes of a prehearing conference include to consider:

(i) Simplification of issues;

(ii) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;

Commented [CCJ(16): The proposed revision cleans up outdated language around recordings of hearings.

(iii) Limitations on the number and consolidation of the examination of witnesses;

(iv) Procedural matters;

(v) Distribution of written testimony and exhibits to the parties prior to the hearing; and

(vi) Such other matters as may aid in the disposition or settlement of the case.

(b) Prehearing conferences may be held by telephone conference call or at a time and place specified by the neutral chairperson.

(c) Following a prehearing conference, the neutral chairperson shall issue an order reciting the action taken at the conference, and the agreements made by the parties concerning all of the matters considered. If no objection is filed within ten days after the date that the order is mailed, it shall control the subsequent course of the case unless modified for good cause by subsequent order.

(2) The arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice to the parties. For good cause shown, the neutral

chairperson may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

(a) A ~~tape~~-recording of the hearing shall be taken and shall be the official record of the hearing, unless the parties agree to take a transcript. If the parties do not agree to take a transcript and share in its cost, a party may take a transcript at its own expense. If a copy of the transcript is provided to the neutral chairperson, all parties shall have access to a copy.

(b) The statutory prohibition against a partisan arbitrator presenting the case for a party shall not preclude another member of the same organization or firm from presenting the case at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-225, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-225, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-225, filed 9/30/80, effective 11/1/80.]

WAC 391-55-230 Interest arbitration—Order of proceedings

and evidence. The order of presentation at the hearing shall be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the neutral chairperson and copies shall be provided to the partisan arbitrators and to the other parties. The exhibits shall be retained by the neutral chairperson until an agreement has been signed or until any judicial review proceedings have been concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairperson. The neutral chairperson has authority to administer oaths, to require the attendance of witnesses, and to require the production of documents that he or she may deem to be material.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-230, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080,

41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-230, filed 9/30/80, effective 11/1/80.]

WAC 391-55-235 Interest arbitration—Arbitration in the absence of a party. The neutral chairperson may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute shall not be made solely on the default of a party, and the neutral chairperson shall require the participating party to submit evidence as may be required for making of the findings of fact and determining the issues.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-235, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-235, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-235, filed 9/30/80, effective 11/1/80.]

WAC 391-55-240 Interest arbitration—Closing of arbitration hearings. The neutral chairperson shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs or closing arguments within agreed time limits.

Commented [CJ(17): The proposed revisions acknowledges a practice in some interest arbitration hearings, particularly with the State, in which the parties elect to utilize closing arguments in lieu of post-hearing briefs.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-240, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-240, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-240, filed 9/30/80, effective 11/1/80.]

WAC 391-55-245 Interest arbitration-Award. The rulings and determination of the neutral chairperson shall be controlling, and shall not require concurrence, but may be accompanied by the concurring and/or dissenting opinions of the partisan arbitrators. The rulings and determinations shall not be subject to appeal to the commission, but the neutral chairperson shall submit a copy of the award to the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-245, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-55-245, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-245, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-245, filed 9/30/80, effective 11/1/80.]

WAC 391-55-255 Interest arbitration-Expenses of arbitration. Each party shall pay the expenses of presenting

Commented [CCJ(18): The proposed revision cleans up outdated language around recordings of hearings.

its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairperson appointed under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a recording of the proceedings, shall be shared equally between the parties. The fees and traveling expense of a neutral chairperson appointed under WAC 391-55-210(2), along with the costs of ~~tapes for a tape~~ recording of the proceedings but not a transcription or the services of a court reporter, shall be paid by the commission.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-255, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-255, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-255, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

WAC 391-55-265 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings. (1) The executive director shall suspend the

Commented [CCJ(19): The proposed revision maintains the existing suspension rule for interest arbitration eligible units that do not bargain with the State. Eligible units that bargain with the State are moved to a new rule in -55-2651.

certification of some or all issues under WAC 391-55-200
involving a bargaining unit eligible for interest arbitration
under RCW 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, as
follows:

(a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective bargaining must communicate its concerns to the other party during bilateral negotiations and/or mediation. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed ~~illegality~~ non-mandatory subject of bargaining, the objecting party must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the "collective bargaining" obligations imposed by RCW 41.56.030(4) must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings.

(c) If a preliminary ruling is issued under WAC 391-45-110 that an unfair practice violation could be found on a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint shall be made before any determination is made in interest arbitration on the disputed issue or issues.

(2) Issues suspended under subsection (1) of this section shall be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that the suspended issue or issues was/were unlawfully advanced or affected by unlawful conduct, the issue or issues shall be stricken from the certification under WAC 391-55-200, and the party advancing the proposal shall only be permitted to advance such modified proposals as are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that the suspended issue or issues was/were lawfully advanced, the suspension under this section shall be terminated and the issue or issues shall be remanded to the interest arbitration panel for ruling on the merits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-265, filed 7/1/99, effective 8/1/99.]

WAC 391-55-2651 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings—Special Proceedings. (1) The executive director may

suspend the certification of some or all issues under WAC 391-55-200 involving a bargaining unit eligible for interest

arbitration under RCW 41.56.028, 41.56.029, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270(2)(c),

as follows:

- (a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective bargaining must communicate its concerns to the other party during bilateral negotiations and/or mediation. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed non-mandatory subject of bargaining, the objecting party must file a complaint charging unfair labor practices under chapter 391-45 WAC during the window period in order to invoke the suspension

Commented [CCJ(20): The proposed rule creates a new process for the suspension of issues from interest arbitration for bargaining units that negotiate with the State. For a scope of bargaining issue to be suspended upon a claim that it is not a mandatory subject of bargaining, the complaining party must file a ULP during the applicable window period. Any ULP shall be expeditiously processed by the Agency, which decision will determine whether an issue remains suspended from interest arbitration.

process. The window period shall begin July 1st during each even-numbered year and closes July 20th of the same year. Any issue not open during the window period may still be subject to unfair labor practice proceedings but will not be subject to certification or the suspension proceedings under this rule.

(i) Any such complaint shall be processed expeditiously by the agency. If a deficiency notice is issued the filing party shall have five days following service to cure any deficiencies and file an amended complaint. If the defects are not cured within five days, an order shall be issued and served, dismissing the defective allegation(s) and stating the reasons for that action. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection shall be the final order of the agency. Any such proposal shall not be suspended and is eligible for certification pursuant to WAC 391-55-200.

(ii) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a cause of action statement summarizing the allegation(s) shall be issued and served on all parties, with the same force and effect as under WAC 391-45-090. Any issue identified in the cause of action statement shall be suspended from certification. Following the issuance of a cause of action statement, the other party shall have seven days to file and serve an answer.

(iii) At the direction of the assigned hearing examiner, a hearing or the submission of documentation and briefs shall occur no later than fifteen days after the filing and service of the answer. The hearing examiner shall have authority to direct the submission of evidence by the parties during the hearing or to seek agreement by the parties to rule on the matter

based solely on documents and written submissions.

(iv) At the close of any hearing, the parties may elect to submit closing arguments or written briefs. Briefs shall be due no later than seven days following the close of the hearing.

~~(i)~~ (v) The hearing examiner shall issue a written decision, including Findings of Fact and Conclusions of Law, on an expedited basis. If the hearing examiner determines that any issue was non-mandatory and constituted an unfair labor practice, the issue shall remain suspended. If the hearing examiner determines an unfair labor practice was not committed, the suspension of any issue shall be immediately lifted. A modified certification list shall be immediately issued including any issue previously suspended that was found not to constitute an unfair labor practice. Either party may appeal the ruling of the hearing examiner pursuant to WAC 391-45-350.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the "collective bargaining" obligations imposed by RCW 41.56.030(4) or 47.64.120, must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings. The executive director shall suspend some or all issues under WAC 391-55-200 based on the scope of the complaint.

WAC 391-55-300 Fact-finding.

If a dispute has not been settled after bilateral negotiations and mediation, fact-finding may be initiated. ~~either~~A party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party or the Executive Director may direct the parties into a fact-finding proceeding.

(1) For disputes involving educational employees under chapter 41.59 RCW who have made a request for the appointment of a fact finder, a period of ten days of mediation must have

Commented [CCJ(21): The proposed revisions enables the Executive Director to direct the parties into a fact-finding proceeding when it is necessary or appropriate to promote labor-management relations.

elapsed. The parties may, by agreement made at any time prior to the appointment of a fact finder, extend the period for mediation or place in the hands of the mediator the determination of when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding shall be initiated if resolution is not reached through mediation by one hundred days beyond the expiration date of a contract previously negotiated under that chapter or one hundred days from the initiation of mediation if no such contract exists.

(3) The Executive Director may direct the parties to conduct fact finding proceedings at any time.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-300, filed 1/31/08, effective 4/1/08.

Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

WAC 391-55-302 Special provision—Educational employees.

WAC 391-55-310 through 391-55-355 are not applicable to

negotiations between educational employees and employers
conducted under RCW 28A.657.050.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and
41.59.110. WSR 10-20-172, § 391-55-302, filed 10/6/10, effective
11/6/10.]

WAC 391-55-310 Selection of fact finder. (1) Upon the
submission of a timely request for fact-finding, ~~the executive
director shall furnish a list of members of the dispute
resolution panel, and~~ the parties shall meet within seven days
~~following receipt of the list,~~ to attempt to select a fact
finder. ~~Names shall be referred and any fact finder shall be
selected under WAC 391-55-120.~~

Commented [CCJ(22): The proposed revision eliminates
procedures for the selection of a fact finder that are not
used by the Agency or not provided for under applicable
statutory authority. A subsection is removed that is
redundant.

(a) The parties may agree to designate the mediator as fact
finder.

(b) If the parties agree on a fact finder, they shall
obtain a commitment to serve and shall notify the executive
director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder
within seven days, they shall immediately notify the executive
director.

~~(d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).~~

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder.

(a) For disputes under chapter 41.59 RCW, the fact finder shall be a member of the commission staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the commission.

(b) For disputes under chapter 41.80 RCW, the fact finder may be a member of the commission staff or may be a member of the dispute resolution panel established in WAC 391-55-120. [Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-310, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022,

41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-310, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

WAC 391-55-315 Conduct of fact-finding proceedings—Waiver of objections. Proceedings shall be conducted as provided in WAC 391-55-300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party who proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object. [Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-315, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-315, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-315, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

WAC 391-55-320 Submission of proposals for fact-finding. At least seven days before the date of the fact-finding hearing,

each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties shall not be entitled to submit issues which were not among the issues mediated under WAC 391-55-070.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-320, filed 1/31/08, effective 4/1/08.

Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-320, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

WAC 391-55-321 Fact-finding pre-hearing conference. The

fact-finder may, upon his or her own motion or upon request of a party, convene a prehearing conference or conferences.

(1) The purpose or purposes of a prehearing conference include to consider:

(a) Simplification of issues;

(b) Identification of evidence or supporting documentation

that either or both parties may be required to bring to the hearing;

Commented [CCJ(23)]: The proposed new rule outlines the fact-finders' statutory authority to investigate and hold a hearing to include a pre-hearing conference where the issues, evidence, and other procedural matters may be discussed.

(c) Limitations on the number and consolidation of the examination of witnesses;

(d) Procedural matters; and

(e) Such other matters as may aid in the disposition or settlement of the case.

(2) Prehearing conferences may be held by telephone conference call or other electronic means at a time and place specified by the fact-finder.

WAC 391-55-325 Fact-finding hearing. The fact finder shall establish a date, time and place for a hearing. The fact-finding hearing shall be open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-325, filed 1/31/08, effective 4/1/08.

Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

WAC 391-55-330 Order of proceedings and evidence. The order of presentation at the fact-finding hearing shall be as agreed by the parties or as determined by the fact finder. The fact finder shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the fact finder and copies shall be provided to the other parties. The exhibits shall be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder. [Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-330, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-330, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

WAC 391-55-335 Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one

party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations shall not be made solely on the default of a party, and the fact finder shall require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-335, filed 1/31/08, effective 4/1/08.

Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-335, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-335, filed 1/6/81.]

WAC 391-55-340 Closing of fact-finding hearings. The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-340, filed 1/31/08, effective 4/1/08.

Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-340, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080,

41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

WAC 391-55-345 Findings of fact and recommendations.

Within thirty days after his or her appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder shall not be subject to appeal to the commission. Fact finders shall rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties, and shall not rule on whether a subject or proposal in dispute is a mandatory subject for collective bargaining.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-345, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 98-14-112, § 391-55-345, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-345, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-345, filed 1/6/81.]

WAC 391-55-350 Responsibility of parties after fact-

finding. The parties are entitled to consider the fact finder's recommendations privately, before they are made public.

(1) For cases under chapter 41.59 RCW, within five days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within ten working days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ask the agency to provide further mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-350, filed 1/31/08, effective 4/1/08.

Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 00-14-048, § 391-55-350, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-350, filed

7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

WAC 391-55-355 Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing them. The fees and expenses of a fact finder shall be paid as follows:

(1) A fact finder appointed by the commission from the commission staff under WAC 391-55-310 (2) (a) shall be paid by the commission.

(2) A fact finder selected from the dispute resolution panel or some other source shall be paid by the parties, in equal shares.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-355, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-355, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]

WAC 391-55-400 Advisory Opinion. For bargaining units eligible for interest arbitration under RCW 41.56.028,

Commented [CCJ(24): The proposed rule creates a new advisory opinion process for bargaining units eligible for interest arbitration that negotiate with the State. The rule addresses situations where scope of bargaining issues develop during bargaining and the parties dispute whether the issue is mandatory or not. In such situations, either party may petition the Executive Director to issue an advisory opinion on the issue and whether it likely would be considered a mandatory subject of bargaining.

41.56.029, 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), during negotiations for a successor agreement if a dispute arises concerning the scope of what is eligible to be bargained (i.e. mandatory or permissive subjects of bargaining), either party may request an advisory opinion from the executive director through the following process:

- (1) During the course of negotiations or mediation, upon receipt of a proposal(s) that one party believes may constitute a non-mandatory subject of bargaining, the receiving party must put the other party on notice of the belief that the proposal(s) submitted is non-mandatory.
- (2) A cooling off period shall be invoked in which both parties must discuss the alleged non-mandatory proposal in at least one subsequent bargaining or mediation session.
- (3) If, after the cooling off period, the offering party does not withdraw or modify the proposal(s) to eliminate any non-mandatory elements, either party may request an advisory opinion from the executive director. The request shall be filed with the agency and served on all parties consistent with WAC 391-08-120.
- (4) With any request for an advisory opinion, the requesting party shall include only the following documentation and written materials:

- a. A copy of the proposal(s) alleged to be non-mandatory;
- b. A certification from the party's chief negotiator that objections to the alleged non-mandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling off period was invoked;
- c. A brief statement (no more than 5 pages, 12 point font, double-spaced) detailing the reasons why the party believes the proposal(s) to be mandatory or non-mandatory;
- d. A copy of any legal material supporting the alleged non-mandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(5) Within five business days of receipt of service of the request for an advisory opinion, the other party may file a response, which shall include only the following documentation and written materials:

- a. A response from the party's chief negotiator that objections to the alleged non-mandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling off period was invoked;

b. A brief statement (no more than 5 pages, 12 point font, double-spaced) detailing the reasons why the party believes the proposal(s) to be mandatory or non-mandatory;

c. A copy of any legal material supporting the alleged mandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(6) Upon filing of the materials outlined in subsections (4) and (5) above, the executive director shall review all materials and notify the parties if an advisory opinion will be issued. If the executive director, at his/her discretion, determines it appropriate to issue an advisory opinion, it shall be issued within thirty days of the filing of all materials outlined above. If the executive director determines it is not appropriate to issue an advisory opinion, he/she shall notify the parties in writing.

~~(1)~~(7) An advisory opinion shall not be a final decision by the agency and is not subject to any review under WAC 391-45-350. Advisory opinions will not be published by the agency and will be directed solely to the requesting parties.