

Chapter 391-45 WAC

UNFAIR LABOR PRACTICE CASE RULES

Last Update: 2/15/1220

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-45-013 Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-013, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-056 (Order 88-05), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.

391-45-056 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, § 391-45-056, filed 1/14/03, effective 2/14/03.] Repealed by WSR 08-04-059, filed 1/31/08, effective 4/1/08.

391-45-150 Authority of examiner. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-150, filed 9/30/80, effective 11/1/80.] Repealed by WSR

83-24-034 (Order 83-04), filed 12/1/83, effective
1/1/84. Statutory Authority: RCW 34.04.022,
41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-45-171 Special provision—Public employees. [Statutory
Authority: RCW 28B.52.080, 41.56.040, 41.58.050,
41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7),
§ 391-45-171, filed 9/30/80, effective 11/1/80.]
Repealed by WSR 86-11-054 (Order 86-01), filed
5/20/86. Statutory Authority: RCW 34.04.033
[34.04.022], 41.58.050, 41.56.090 and 41.59.110.

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 Repealed by WSR 00-14-048, filed

6/30/00, effective 8/1/00. Statutory Authority: RCW
28B.52.080, 41.56.090, 41.59.110, 41.58.050.

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Repealed by WSR 98-14-112, filed 7/1/98, effective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

391-45-431 Special provision—Public employees. [Statutory
Authority: RCW 41.58.050, 28B.52.080, 41.56.090,
41.59.110 and 41.56.190. WSR 90-06-074, § 391-45-
431, filed 3/7/90, effective 4/7/90. Statutory
Authority: RCW 28B.52.080, 41.56.040, 41.58.050,

41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7),
§ 391-45-431, 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, 41.58.050 and 41.56.160.

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 391-45-001 Scope-Contents-Other rules. This chapter
governs proceedings before the public employment relations
commission on complaints charging unfair labor practices under
all chapters of the Revised Code of Washington (RCW)
administered by the commission. ~~The provisions of this chapter
should be read in conjunction with:~~ 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.

~~(1) Chapter 10-08 WAC, which contains the model rules of
procedure promulgated by the chief administrative law judge to~~

Commented [RD(1): Proposed revisions eliminate unnecessary cross-references to other WAC chapters and clarify the relationship between these unfair labor practice rules, the model rules, and PERC's general rules found in chapter 391-08 WAC.

~~regulate adjudicative proceedings under chapter 34.05 RCW, except:~~

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

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

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

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

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

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

~~(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit~~

~~determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

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

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

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

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, § 391-45-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-45-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-45-001, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. WSR 90-06-

074, § 391-45-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-001, filed 9/30/80, effective 11/1/80.]

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

~~(1) Special provisions relating to chapter 41.56 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.~~

~~(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC~~

Commented [RD(2): The proposed deletion of this rule eliminates an unnecessary table of contents. Application of a separate rule would be evident from the rule itself.

~~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, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 12-05-066, § 391-45-002, 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, 41.80.120, and 49.39.060. WSR 10-20-172, § 391-45-002, 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, § 391-45-002, 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, § 391-45-002, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-45-002, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW~~

~~41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. WSR 90-06-074, § 391-45-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW~~

~~34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-034 (Order 83-04), § 391-45-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040,~~

~~41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7),
§ 391-45-002, filed 9/30/80, effective 11/1/80.]~~

~~WAC 391-45-010 Complaint charging unfair labor practices--~~

~~Who may file.~~ A complaint charging that ~~an-person employer or~~
~~employee organization~~ has engaged in or is engaging in an unfair
labor practice may be filed by any employee, employee
organization, employer, or their agents.

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

~~WAC 391-45-019 Special provision-Private sector employees.~~

~~The provisions of chapter 391-45 WAC are inapplicable to private
sector collective bargaining under chapter 49.08 RCW.~~

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

Commented [RD(3): The proposed substitution recognizes that unfair labor practice complaints are focused on employers and/or employee organizations.

Commented [RD(4): The strike is prosed as this rule represents an unnecessary clarification.

~~WAC 391-45-030 Complaint-E-filing and filing in writing-
Number of copies Filing Service.~~

Commented [RD(5): Proposed revisions clarify the section header, and update filing procedures for unfair labor practice complaints.

Each complaint charging unfair labor practices shall be filed through the agency's on-line e-filing system, by email, or in writing, ~~and shall be filed at~~ the commission's Olympia office, as required by WAC 391-08-120(1). The party filing the complaint shall serve a copy on each party named as a respondent, as required by WAC 391-08-120 (3) and (4).
[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-030, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-030, filed 3/20/96, effective 4/20/96.
Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-030, filed 3/7/90, effective 4/7/90.
Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-030, filed 9/30/80, effective 11/1/80.]

~~WAC 391-45-050 Contents of complaint filing form and e-filing form - Contents of complaint.~~ (1) Each ~~complaint~~ charging unfair labor practices complaint form and e-filing form shall requeste~~contain, in separate numbered paragraphs:~~

Commented [RD(6): In the header, the proposed revisions clarify the contents of the rule, and distinguish between the filing form and the attached complaint. The proposed revisions update and clarify filing procedures as well as update and clarify what information is required to file an unfair labor practice complaint.

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

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

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

~~(eiii)~~ The name, address, email address, and telephone number, ~~fax number, and email address~~ of the party filing the complaint (complainant), and the name, address, email address, and telephone number, ~~fax number, and email address~~ of its principal representative.

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

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

Commented [RD(7): Proposal to longer allow filing by fax.
Prior concerns over access will be considered.

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

Commented [RD(8): This subsection has been moved below so that this information is not required on the filing form but is required in the complaint as is our current practice.

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

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

Commented [RD(9): The proposed deletion is made as this information is unnecessary.

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

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

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

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

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

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

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

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

Commented [RD(10): The proposed strike eliminates language that is unnecessary. Valid complaints alleging unfair labor practices are based on statute. For preliminary rulings, finding only a cause of action for unilateral change (includes skimming and contracting out), the respondent will be asked to provide in the Answer if they would like to defer the issue to arbitration.

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

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

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

~~(d) Or any other information contained in the "Unfair Labor Practice Complaint" form found on the agency's website or as required through the agency's e-filing system.~~

~~(2) Each complaint filing form and e-filing form shall have a complaint attached and contain in separate numbered paragraphs;~~

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

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

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

Commented [RD(11): The proposed changes are made so we no longer receive a statement of the recognition clause/certification, and rather receive information about the job title(s) of the employee(s) at-issue which is more concise and all that is needed for filing.

Prior comments on a similar section in the 65s are noted. We will discuss rewording for clarity.

Commented [RD(12): The proposed change is made because this information is not relevant in the context of filing a ULP complaint.

Commented [RD(13): The proposed change is made to comport with current practice. PERC has not asked for this information on the complaint filing form since 2013. We stopped asking because many complainants would check the wrong box, or check all the boxes causing us to have to issue a deficiency notice or call asking that an amended complaint be filed. In the preliminary ruling, PERC determines what statute(s) are alleged to have been violated.

Commented [RD(14): Proposed addition so we can adjust for any future changes as needed.

Commented [RD(15): Proposed lead in is new for the same subsections above under old (2), (3) and (4). The lead in is meant to distinguish between the form and the complaint itself.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-050, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-050, filed 9/30/80, effective 11/1/80.]

WAC 391-45-070 Amendment. (1) A complaint may be amended

upon motion made by the complainant, if:

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

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

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

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

Commented [RD(16): Proposed rule changes reflect how rules are currently processed in the agency.

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

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

Commented [RD(17): Allows internal flexibility for processing motions to amend. We now have two preliminary rulings managers either of whom may process amendments at this stage of the proceeding.

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

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

(3) Where a motion for amendment is denied ~~prior to the opening of an evidentiary hearing~~, the proposed amendment shall be processed as a separate case.

Commented [RD(18): The rule change is proposed because we do not now open a separate case if the motion is made at hearing and denied. If the motion is made between hearing dates and denied, a complainant can file a separate case.

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

WAC 391-45-090 Withdrawal. (1) A complaint may be

withdrawn by the complainant, through an email to the examiner,
or by a written request filed under WAC 391-08-120 before
issuance of a decision by an examiner.

Commented [RD(19): The proposed rule change reflects how this rule is currently applied by the agency and gives additional direction.

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

Commented [RD(20): The statutory period is set by the legislature and cannot be overridden by agreement of the parties.

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

WAC 391-45-110 Deficiency notice~~Preliminary ruling~~Cause
of action statement~~Deferral to arbitration~~. The executive

director or a designated staff member shall determine whether
the facts alleged in the complaint may constitute an unfair
labor practice within the meaning of the applicable statute.

Commented [RD(21): Proposed changes reflect change in terminology from "preliminary ruling" to "cause of action statement," removes unnecessary words, and clarifies rule.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice shall be issued and served on all parties, identifying the defects ~~and specifying a due date for the filing and service of an amended complaint.~~ If the defects are not cured within twenty-one 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 on the defective allegation(s), with the same force and effect as if issued by the commission.

Commented [RD(22): We propose removing this language to simplify the rule. The next sentence states that the complainant has 21 days to cure any deficiency.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a ~~preliminary ruling~~ cause of action statement summarizing the allegation(s) shall be issued and served on all parties.

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

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

(c) The ~~preliminary ruling~~ cause of action statement shall establish the due date for the respondent to file its answer.

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

(a) Deferral to arbitration may be ordered where:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining

Commented [RD(23)]: Changed "must" to "may" to make it clear that raising the issue in (2) (b) is not a condition precedent to appeal through (2) (a). See *King County, Decision 12582-B (2018)*, which uses "or" to describe the union's options.

agreement in effect between the parties at the time of the alleged unilateral change;

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

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

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

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW

28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 28B.52.073, 34.05.419, 41.56.140, 41.56.150 and 41.59.140. WSR 00-14-048, § 391-45-110, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-110, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-110, filed 3/20/96, effective 4/20/96.

Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. WSR 90-06-074, § 391-45-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]

WAC 391-45-130 Examiner-Who may act. The executive

director or a designated staff member shall assign an examiner to conduct further proceedings in the matter, and shall notify the parties of that assignment. ~~The examiner may be a member of the agency staff or any other individual designated by the commission or executive director.~~ Upon notice to all parties, an examiner may be substituted for the examiner previously presiding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-130, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110,

Commented [RD(24): We propose deleting language in this rule for two reasons. Assignment of the agency's staff is addressed in WAC 391-08-630(4). And, we have never had anyone other than agency staff act as an examiner.

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

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

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

WAC 391-45-190 Answer—Filing and service. An answer to a complaint charging unfair labor practices shall be in writing. The respondent shall file its answer as required by WAC 391-08-

120(1), and shall serve a copy on the complainant, as required by WAC 391-08-120 (3) and (4).

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

WAC 391-45-210 Answer-Contents-Amendment-Effect of failure

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

Commented [RD(25): In the case of a late answer, the proposed rule change clarifies how examiners weigh this rule that applies "good cause" and WAC 391-08-003 that applies "prejudice".

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

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

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

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

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

(4) If a respondent fails to file a timely answer or fails to specifically deny or explain a fact alleged in the complaint, the facts alleged in the complaint shall be deemed to be admitted as true, and the respondent shall be deemed to have waived its right to a hearing as to the facts so admitted. A motion for acceptance of an answer after its due date shall ~~only~~ be granted for good cause, unless the complainant can show that

it would be prejudiced by such action in accordance with WAC 391-08-003.

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

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

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

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

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

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

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

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

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

(3) ~~Any settlement conference mediation shall may~~ be held
at any time before issuance of a decision by an examiner in

Commented [RD(26): We propose changing "settlement conference" to "settlement mediation" to reflect current terminology and provide clarity.

Commented [RD(27): We propose removing the beginning of the first sentence, as it seems unnecessary to distinguish between "prehearing conference" and "settlement mediation."

Commented [RD(28): Other changes are proposed to reflect the agency's current processing and practices. We no longer maintain physical case files or papers.

Commented [RD(29): Under subsection (3), "shall" is changed to "may" because in not every case will the parties agree to participate in mediation. And, for consistency, because at the very beginning of this rule, it states that settlement mediation "may" be held.

Commented [RD(30): The proposed addition is made to clarify our process.

~~advance of the scheduled hearing date~~ on the underlying unfair labor practice proceedings.

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

(5) ~~Unless otherwise determined by the executive director,~~)

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-260, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-260, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-260, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050,

Commented [RD(31): This proposed language would allow the executive director to order parties to mediation.

28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-260, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-056 (Order 88-05), § 391-45-260, filed 5/31/88.]

WAC 391-45-270 Hearings-Reopening of hearing. (1)

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

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

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

~~(c) The examiner's authority under WAC 10-08-200 (8) and (9) shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant or respondent under this subsection.~~

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party ~~upon that~~

Commented [RD(32): Because it is unnecessary and repetitive, we propose removing subsection (c) after the rule states in subsections (a) and (b) what responsibilities rest with the complainant and respondent.

discovery ~~of ed~~ new evidence which could not with reasonable diligence have been discovered and produced at the hearing. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-45-270, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-270, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-270, filed 9/30/80, effective 11/1/80.]

WAC 391-45-290 Post-hearing bBriefs. (1) Any party shall be entitled, upon request made before the close of the hearing, to file a post-hearing brief.

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

(3) Arrangements and due dates for briefs shall be established by the examiner before the close of hearing.

(4) Any brief shall be filed with the examiner agency 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).

Commented [RD(33)]: The proposed changes clarify wording, reflect how the agency actually processes briefs, and remove unnecessary wording.

Commented [RD(34)]: The proposed addition is made to clarify our process that the examiner establishes the briefing schedule at hearing and then goes back on the record before concluding the hearing.

Commented [RD(35)]: Clarifies PERC's filing process.

(25) 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 ~~hearing~~ examiner 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~~ examiner at the end of the administrative hearing, and the ~~hearing officer~~ examiner 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, 41.80.120. WSR 08-04-058, § 391-45-290, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-290, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-290, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-290, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080,

Commented [RD(36): The change in wording is proposed to make the subsection consistent WAC 391-45-350(9) (a) below that covers the same type of motion in the context of novel or complex issues raised by an appeal.

Commented [RD(37): "Hearing officers" are fact finders in representation and clarification cases, and "examiners" preside in ULP hearings.

41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-290, filed 9/30/80, effective 11/1/80.]

WAC 391-45-310 Motions for discretionary review - Examiner

decisions. (1) (a) A party seeking review by the commission of an interlocutory decision of the executive director, ~~his or her~~ designee, or an hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director, ~~his or her~~ designee, or an hearing examiner, 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 an hearing examiner will be accepted by the commission only:

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

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

Commented [RD(38)]: The proposed changes clarify the section header as well as the size of type to use, and remove unnecessary wording.

Commented [RD(39)]: Changes made reflect gender neutral language.

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

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

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

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

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

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

(e) 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 hearingan examiner's decision or the issues pertaining to that decision.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 10-20-172, § 391-45-310, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

WAC 391-45-330 Withdrawal or modification of examiner decision. The examiner may set aside, modify, change or reverse

any findings of fact, conclusions of law or order, if any mistake is discovered in the decision.

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

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

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-45-330, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-330, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-330, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-330, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-330, filed 9/30/80, effective 11/1/80.]

WAC 391-45-350 Appeals. An order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to

Commented [RD(40): The proposed revisions remove unnecessary wording, and change a word so it is consistent with our editing protocols.

the issuance of the order may be appealed to the commission as follows:

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

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

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

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

(5) A notice of appeal or notice of cross-appeal shall be filed ~~at the commission's Olympia office~~ as required by WAC 391-

08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

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

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

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief

is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve12-point type), unless:

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

(b) The commission 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, § 391-45-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-350, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-350, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR

85-19-059 (Resolution No. 85-01), § 391-45-350, filed 9/16/85.
Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050,
41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-
350, filed 9/30/80, effective 11/1/80.]

WAC 391-45-390 Commission action on appeals. If an order

Commented [RD(41): The proposed rule change clarifies what the Commission reviews on appeal.

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

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

~~WAC 391-45-394 Special provision Marine employees.~~ If an

~~order is appealed under WAC 391-45-350 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 status of each position, classification or group covered by the appeal, and shall issue appropriate orders.~~

~~[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-45-394, filed 2/15/12, effective 3/17/12.]~~

WAC 391-45-410 Unfair labor practice remedies—Back pay.

If an unfair labor practice is found to have been committed, the commission or examiner shall issue a remedial order. In calculating back pay orders, the following shall apply:

(1) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings the employee may have received during the period of the

Commented [RD(42): The proposed strike reflects that marine employees are currently under the Commission's jurisdiction and that there is no longer any Marine Employees' Commission.

violation in substitution for the terminated employment,
calculated on a quarterly basis.

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

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

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

WAC 391-45-430 Motion for temporary relief. In addition

to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may make a motion requesting that the commission ~~seek issue an injunction for appropriate temporary relief through the superior court, and a.~~ All such motions shall be processed as provided in this section.

(1) When the complaint is filed, or as soon thereafter as facts giving rise to the request for temporary relief become known, the complainant shall file written notice of its intent to make a motion for temporary relief with the executive director as required by WAC 391-08-120(1), and shall serve a copy of the notice on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4).

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

(3) After a determination that the complaint states a cause of action under WAC 391-45-110, the complainant may file and serve, as required by WAC 391-08-120, a motion for temporary

Commented [RD(43)]: The proposed changes would allow the Commission to issue an injunction, rather than seek one through the superior court. Under the proposed rule, the Commission could seek enforcement of its injunction in superior court.

Minor non-substantive wording changes are proposed. Outdated and unnecessary language is removed.

Commented [RD(44)]: We propose adding language that would allow the Commission to issue an injunction.

relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies.

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

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

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

harm ~~unless if~~ the status quo ~~be is not~~ preserved pending the completion of administrative proceedings."

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

Commented [RD(45): We propose removing language that would have the Commission seek an injunction in court.

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

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

(c) If the commission issues an injunction for temporary relief and the respondent fails to follow, the executive director, with the assistance of the attorney general, shall petition to enforce the injunction in the superior court of the county in which the main office of the employer is located or where the person who is alleged to be engaging in unfair labor practices resides or transacts business.

Commented [RD(46): We propose adding language that would allow the Commission to seek enforcement of its injunction in court.

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

WAC 391-45-550 Collective bargaining—~~Policy~~Commission
determines mandatory subjects. It is the policy of the commission to promote ~~bilateral~~ collective bargaining negotiations between employers and the exclusive representatives of their employees. Parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming

Commented [RD(47): The proposed rule changes clarify the contents of the rule by making changes to the rule title and remove unnecessary wording.

into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to a particular issue does not and cannot confer the status of a mandatory subject on a nonmandatory subject. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.030(4), 41.59.020(2) and 53.18.015. WSR 00-14-048, § 391-45-550, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-550, filed 9/30/80, effective 11/1/80.]

~~WAC 391-45-552 Special provision Educational employees.~~

Commented [RD(48)]: The striking of this rule is proposed as the rule is unnecessary.

~~The obligation to bargain in good faith imposed upon an employer and the exclusive representative of its employees, respectively, by RCW 41.59.020(2) and 41.59.140 (1)(e) or (2)(e) includes:~~

- ~~(1) The obligation to submit, as to each subject for bargaining advanced by the party, a written statement of the language proposed for incorporation in or deletion from the~~

~~collective bargaining agreement between the parties, together with a written or oral explanation or justification of the proposals.~~

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

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

~~(4) The obligation to exhaust the mediation and fact finding procedure established pursuant to RCW 41.59.120 before~~

~~implementing all or any part of a final offer in negotiations,
except as provided in RCW 41.59.930.~~

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