

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

WAC 391-25-001 ~~Scope—Contents—Other rules.~~ This chapter governs representation proceedings ((before the public employment relations commission on petitions for investigation of questions concerning representation of employees)) under all chapters of the Revised Code of Washington (RCW) administered by the ((commission. The provisions of this chapter should be read in conjunction with:

(1) ~~Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:~~

(a) ~~WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070 and 391-25-090;~~

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

(c) ~~WAC 10-08-211, which is replaced by detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, and 391-25-670; and~~

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

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

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

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

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

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

(7) ~~Chapter 391-95 WAC, which regulates union security nonassociation proceedings))~~ agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

faculty who collectively bargain under chapter 41.76 RCW, the agreement only operates as a bar for the first three years after its effective date.

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

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

~~(b) More than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.~~

~~(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time).~~

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

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

WAC 391-25-050 Petition (~~(in writing Number of copies)~~)—Filing(~~(—)~~) and service. (~~(Each)~~) A representation petition (~~(for investigation of a question concerning representation shall be)~~) may be filed through the agency's online e-filing system, by email, or in writing(~~(, and shall be filed at)~~) to the (~~(commission's)~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The party filing the petition shall serve a copy of the petition (excluding any showing of interest) on the employer and (~~(an)~~) each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

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

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

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

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

(~~(2)~~) (b) The name, email address, mailing address, and telephone number(~~(, fax number, and email address)~~) of the petitioner(~~(,~~

and the name, address, telephone number, fax number, and email address of its principal)) and of the petitioner's representative.

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

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

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

(a) The employer department or division involved;

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

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

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

~~((5) Identification of:~~

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

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

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

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

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

(6) A statement that:

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

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

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

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

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

(7) Any other relevant facts.

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

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

NEW SECTION

WAC 391-25-080 Election for inclusion of unrepresented employees. (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate

bargaining unit that it already represents, the organization may petition for a self-determination election to ascertain the employees' desire to be included in the existing bargaining unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 391-25-090 Petition filed by employer. (1) ~~((Where))~~ If an employer has been presented with one or more demands for recognition of an exclusive bargaining representative of previously unrepresented employees, it may obtain a determination of the question concerning representation by filing a petition under WAC 391-25-070. ~~((Instead of a showing of interest under WAC 391-25-110,))~~ The employer shall attach copies of any written demand(s) for recognition or other correspondence pertaining to the claimed question concerning representation.

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

(a) ~~((Instead of a showing of interest under WAC 391-25-110,))~~ The employer shall attach affidavits and any other documentation ~~((as may be))~~ available to it to demonstrate the existence of a good faith belief that a majority of its employees in an existing bargaining unit no longer desire to be represented by their incumbent exclusive bargaining representative.

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

(3) A petition under this section ~~((shall))~~ may be filed ~~((at the commission's))~~ by email or in writing to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The employer shall serve a copy of the petition (excluding any showing of interest) on each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

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

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

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

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

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

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

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

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

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

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

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

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

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

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

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

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

WAC 391-25-140 Notice to employees—Limitations on employer actions. (1) (a) The employer shall ~~((post))~~ provide to the petitioned-for employees a copy of the petition and a notice ~~((, in the form specified))~~ created by the ~~((commission,))~~ agency to inform employees of the existence of proceedings under this chapter. The ~~((agency shall furnish the employer with copies of the petition and notice, and the))~~ employer shall also post ~~((them))~~ the notice in conspicuous places on its premises where notices to affected employees are usually posted. The ~~((petition and))~~ notice ~~((shall))~~ must remain posted until a ~~((certification or interim certification))~~ direction of election or order of dismissal is issued in the proceeding.

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

(2) Changes of the status quo concerning wages, hours, or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the ~~((commission))~~ agency under this chapter.

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

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

concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

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

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

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

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

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

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

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

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

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

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

WAC 391-25-170 Intervention—By incumbent representative. An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year preceding the filing of the petition (~~(may, by motion,)~~) must automatically be allowed to intervene in the proceedings without motion and (~~(, upon granting of its motion for intervention, shall be)~~) is entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election. (~~(No motion for intervention shall be considered if made:~~

- ~~(1) After the close of the hearing on the petition;~~
- ~~(2) More than seven days after the filing and posting of an election agreement or cross-check agreement; or~~
- ~~(3) More than seven days after the posting of an investigation statement.)~~

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

WAC 391-25-190 Intervention—By organization other than incumbent. (1) An organization not covered by WAC 391-25-170 may, by motion, intervene in proceedings under this chapter (~~(and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election.)~~) if:

(a) The motion for intervention (~~(shall be)~~) is supported by a showing of interest indicating that the intervenor has the support of (~~(ten)~~) at least 10 percent (~~(or more)~~) of the employees in the bargaining unit which the original petitioner claims to be appropriate (~~(- A showing of interest filed in support of a motion for intervention shall be subject to the requirements and confidentiality protections of WAC 391-25-110. A motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the agency may impose to avoid undue delay of the proceedings.)~~); or

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

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

- (a) After the close of the hearing on the petition;
- (b) (~~(More than seven days after the filing and posting of an election agreement or cross-check agreement; or~~
- ~~(c))~~ More than seven days after (~~(the posting of)~~) an investigation statement has been issued and a notice of election or card check has been posted.

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

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

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

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

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

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

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

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

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

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

NEW SECTION

WAC 391-25-215 Bargaining unit configurations—Decertification, change of representation, and severance petitions. (1) A petition to

"decertify" under WAC 391-25-070 (6)(c) or 391-25-090(2) may not alter the existing bargaining unit configuration during the representation proceeding;

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

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

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

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

~~(i) The identification of the parties;~~

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

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

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

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

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

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

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

~~((viii)) (f) The list of employees eligible to vote or be considered in determining a question concerning representation ~~((7))~~ and the cut-off date for eligibility~~((7) and~~~~

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

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

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

~~((2)) (3) The stipulations made by the parties during an investigation conference may be set forth in an investigation statement issued ~~((in lieu of an election agreement or cross-check agreement.~~~~

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

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

~~((3)) (4) When it appears that all conditions precedent to an election or ~~((cross-check))~~ card check are met, the executive director or designee shall ~~((determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute. The agency shall proceed with the determination of the question concerning representation. Objections by parties named in the investi-~~~~

gation statement shall be limited to matters relating to specific conduct affecting the results of an election.

~~(4) The parties may set forth stipulations in election agreements or cross-check agreements under this chapter) proceed with the election or card check.~~

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

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

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

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

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

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

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

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

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

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

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

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

WAC 391-25-290 Notice of hearing. If it appears to the executive director or designee that a question concerning representation may exist, a ~~((hearing officer shall issue a))~~ notice of hearing ~~((and have it))~~ will be issued and served on the parties. ~~((Attached to the notice of hearing shall be a copy of the investigation statement issued under WAC 391-25-220.))~~ A notice of hearing may be amended or withdrawn before the close of the hearing.

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

WAC 391-25-299 ~~((Special provision))~~ Private sector and other employees. Except for symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW, the ~~((commission))~~ agency lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. ~~((WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW, except for hearings and issues submitted by stipulation of all parties to the proceeding.))~~

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

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

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

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

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

(b) The hearing officer shall ascertain the respective positions of the parties ~~((r))~~ to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applica-

ble statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

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

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

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

(5) Any brief (~~(shall)~~) must be filed (~~(with the hearing officer)~~) and served as required by WAC 391-08-120(~~(1)~~), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (~~(3) and (4)~~).

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

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

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

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

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

WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed.

(1) The executive director may suspend the processing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings(~~(, where)~~) if:

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

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

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

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

summarily dismiss any objections filed in conflict with the request to proceed.

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

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

The executive director may proceed upon the record, after submission of briefs or after hearing, as ~~((may be))~~ appropriate.

(a) The executive director shall determine whether a question concerning representation exists~~((r))~~ and ~~((shall))~~ issue a direction of election, dismiss the petition, or make other disposition of the matter.

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

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

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

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

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

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

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

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

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

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

(5) Unless appealed to the commission under WAC 391-25-660, a decision issued under this section ~~((shall be))~~ is the final order of

the agency((7)) with the same force and effect as if issued by the commission.

NEW SECTION

WAC 391-25-400 Card check. (1) If only one organization is seeking certification as the exclusive representative of unrepresented employees and the showing of interest exceeds 50 percent of the employees subject to the petition, then the executive director or the executive director's designee may direct a card check to determine whether the employees desire to be represented by the petitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((3)) (b) The cut-off date, if any, or other criteria (~~to be applied in~~) establishing eligibility to vote in the election or card check, including that the eligible employees are limited to those who continue to be employed within the bargaining unit when they cast a ballot in an on-site election, at the deadline for return of mail bal-~~

lots, ~~((or))~~ at the closing of polls in an electronic election, or on the date agency staff conducts the card check under WAC 391-25-400.

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

~~((Notices of the election shall be posted for at least five business days prior to the date on which the polls are opened for an on-site election or electronic election or five business days prior to the date on which ballots are mailed in a mail ballot election.))~~ (2) Notices of the election ~~((shall))~~ or card check must remain posted until a tally of ballots or card check has been issued. The requirement that the employer post the notices of election in conspicuous places on its premises where notices to affected employees are usually posted is inapplicable to the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

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

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

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

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

WAC 391-25-450 Disclaimers. ~~((Prior to the issuance of))~~ Before the agency issues a notice of election and ~~((the mailing of))~~ mails the ballots, an organization may disclaim a bargaining unit and have its name removed from the ballot by written notice filed and served as required by WAC 391-08-120. The organization filing a disclaimer ~~((shall))~~ may not seek to be certified in the bargaining unit, or any subdivision thereof, for a period of at least six months.

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

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

(1) The executive director ~~((shall have))~~ has discretion to conduct elections electronically, by mail, or on-site. The procedures for each means of election ~~((shall))~~ must be designed to preserve the secrecy of employee voting. Multiple questions, including unit determination

elections, may be submitted to employees at the same time on separate ballots.

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

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

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

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

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

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

(c) The use of forged documents is prohibited.

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

(e) Conduct in violation of WAC 391-25-140 is prohibited.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

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

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

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period that the polls are open in an on-site or electronic election or during the period beginning on the scheduled date for a mail ballot election and continuing through the deadline for mail ballots. Other electioneering not prohibited by (a) through (f) of this subsection is permitted during that period.

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

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

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

WAC 391-25-510 Challenged ballots. (1) Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in ~~((the))~~ a mail ballot, on-site, or electronic election. No person ~~((shall))~~ may be denied the right to cast a challenged ballot ~~((The election officer shall not have authority to resolve challenges)),~~ and the ballot of the challenged voter ~~((shall))~~ must be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of the voter ~~((The ballot shall not be opened until the challenge is resolved)).~~

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

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

(4) If the number of challenged ballots ~~((are sufficient in number to))~~ would affect the results of the election, the ~~((election officer shall ascertain the position of each party as to each challenged ballot and shall include the information in his or her report. If challenges raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-25-670))~~ executive director or the executive director's designee shall conduct proceedings under WAC 391-25-390 and rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director or the executive director's designee as to the eligibility of the challenged voter.

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

WAC 391-25-530 Votes needed to determine election. ~~((1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.~~

~~((2) Unless governed by WAC 391-25-531, representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.))~~ (1) Except as provided in subsection (2) of

this section, representation elections must be decided by a majority of those voting.

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

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

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

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

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

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

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

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

WAC 391-25-590 (~~(Filing and service of)~~) **Objections to improper conduct and interim orders.** The due date for objections is seven days after the tally has been served under WAC (~~391-25-410 or under~~) 391-25-400 or 391-25-550, regardless of whether the number of challenged ballots (~~(are sufficient in number to)~~) would affect the results of the election. The time (~~(period)~~) for filing objections cannot be extended.

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

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

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

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

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

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

WAC 391-25-610 Procedure where no objections are filed. If no objections are filed within the time set forth (~~(above, and if any)~~) in WAC 391-25-590, if the number of challenged ballots (~~(are insufficient in number to)~~) does not affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall issue a certification having the same force and effect as if issued by the commission.

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

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

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

(2) If the objections and any responses raise material questions of fact which cannot be resolved without a hearing, ~~((there shall be issued and served on each of the parties a notice of hearing before a hearing officer))~~ the matter may be remanded to the executive director to conduct further proceedings under WAC 391-25-390. ~~((a))~~ Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding.

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

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

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

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

The due date for any appeal brief which the party filing an objection desires to have considered by the commission ~~((shall be fourteen))~~ is 14 days following the later of:

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

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

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

(2) The due date for any responsive brief which any other ~~((parties))~~ party desires to have considered by the commission ~~((shall be fourteen))~~ is 14 days following the date on which that party is served with an appeal brief. ~~((Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).))~~

(3) The executive director or designee may extend the due date for an appeal brief or responsive brief. ~~((Such))~~ Requests ~~((shall))~~ to extend the due date may only be considered if made ~~((on or before))~~ by the date the brief is due ~~((7))~~ and in compliance with WAC 391-08-180. Extensions of time ~~((shall))~~ may not be routine or automatic.

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

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

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

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

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

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

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

An order issued under WAC ~~((391-25-390))~~ 391-25-290 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the ~~((commission))~~ agency, may be appealed to the commission as follows:

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

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

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

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

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

(6) The due date for any appeal brief ~~((which))~~ that the party filing an appeal or cross-appeal desires to have considered by the commission ~~((shall be fourteen))~~ is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief ~~((shall))~~ must be filed ~~((at the commission's Olympia office))~~ and served as required by WAC 391-08-120 ~~((1)), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4))~~.

(7) The due date for any responsive brief ~~((which))~~ that a party desires to have considered by the commission ~~((shall be fourteen))~~ is 14 days following the date on which that party is served with an appeal brief. Any brief ~~((shall))~~ must be filed ~~((at the commission's Olympia office))~~ and served as required by WAC 391-08-120 ~~((1)), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4))~~.

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

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

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

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

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

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

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

WAC 391-25-096	Special provision—State civil service employees.
WAC 391-25-136	Special provision—State civil service employees.
WAC 391-25-137	Special provision—Higher education faculty.
WAC 391-25-197	Special provision—Higher education faculty.
WAC 391-25-217	Special provision—Higher education faculty.
WAC 391-25-229	Special provision—Symphony musicians.
WAC 391-25-230	Election agreements.
WAC 391-25-250	Cross-check agreements.
WAC 391-25-252	Special provision—Educational employees.
WAC 391-25-253	Special provision—Academic employees.
WAC 391-25-391	Special provision—Public employees.
WAC 391-25-396	Special provision—State civil service employees.
WAC 391-25-399	Special provision—Symphony musicians.
WAC 391-25-410	Cross-check of records.
WAC 391-25-412	Special provision—Educational employees.
WAC 391-25-413	Special provision—Academic employees.
WAC 391-25-416	Special provision—State civil service employees.
WAC 391-25-426	Special provision—State civil service employees.
WAC 391-25-427	Special provision—Higher education faculty.
WAC 391-25-436	Special provision—State civil service employees.
WAC 391-25-440	Election for inclusion of unrepresented employees.
WAC 391-25-486	Special provision—State civil service employees.
WAC 391-25-531	Special provision—Public employees.
WAC 391-25-674	Special provision—Marine employees.