

**Chapter 391-35 WAC
UNIT CLARIFICATION CASE RULES**

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-35-002 Sequence and numbering of rules—Special provisions. [Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-35-002, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-35-002, 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, § 391-35-002, 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, § 391-35-002, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-002, 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 83-24-033 (Order 83-03), § 391-35-002, 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 80-14-047 (Order 80-6), § 391-35-002, filed 9/30/80, effective 11/1/80.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-35-026 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, § 391-35-026, filed 1/14/03, effective 2/14/03.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-35-080 Prehearing conferences. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.431. WSR 96-07-105, § 391-35-080, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073 and 41.56.040. WSR 90-06-073, § 391-35-080, filed 3/7/90, effective 4/7/90.] Repealed by WSR 01-14-009, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050.

391-35-099 Special provision—Private sector and other employees. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-35-099, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. WSR 90-06-073, § 391-35-099, 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 80-14-047 (Order 80-6), § 391-35-099, filed 9/30/80, effective 11/1/80.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-35-150 Authority of hearing officer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-150, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-033 (Order 83-03), 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.

391-35-230 Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-230, 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 80-14-047 (Order 80-6), § 391-35-230, 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.

391-35-254 Special provision—Marine employees. [Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-35-254, filed 2/15/12, effective 3/17/12.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-35-300 School district employees. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.59.010 and [41.59].020. WSR 96-07-105, § 391-35-300, filed 3/20/96, effective 4/20/96.]

tive 4/20/96.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

- 391-35-301 Higher education employees. [Statutory Authority: RCW 41.56.060, 41.56.090, 41.58.050. WSR 08-04-058, § 391-35-301, filed 1/31/08, effective 4/1/08.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.
- 391-35-326 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 and 41.80.005(4). WSR 03-03-064, § 391-35-326, filed 1/14/03, effective 2/14/03.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.
- 391-35-327 Special provision—Higher education faculty. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005 (5) and (10). WSR 03-03-064, § 391-35-327, filed 1/14/03, effective 2/14/03.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.
- 391-35-342 Special provision—Educational employees. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.59.080. WSR 01-14-009, § 391-35-342, filed 6/22/01, effective 8/1/01.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.
- 391-35-343 Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.020(3). WSR 01-14-009, § 391-35-343, filed 6/22/01, effective 8/1/01.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.
- 391-35-344 Special provision—Marine employees. [Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-35-344, filed 2/15/12, effective 3/17/12.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.
- 391-35-346 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, 41.80.005(13) and [41.80].070(1). WSR 03-03-064, § 391-35-346, filed 1/14/03, effective 2/14/03.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.
- 391-35-347 Special provision—Higher education faculty. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005 (5) and (9). WSR 03-03-064, § 391-35-347, filed 1/14/03, effective 2/14/03.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

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 391-35-001 Scope—Contents—Other rules. This chapter governs unit clarification proceedings under all chapters of the Revised Code of Washington (RCW) administered by the 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.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-001, filed 11/16/22, effective 1/1/23. 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, § 391-35-001, 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, § 391-35-001, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-001, 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 80-14-047 (Order 80-6), § 391-35-001, filed 9/30/80, effective 11/1/80.]

WAC 391-35-010 Unit clarification petition—Who may file. A unit clarification petition may only be filed by the employer, the exclusive representative, their agents, or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-010, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 96-07-105, § 391-35-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-010, 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 80-14-047 (Order 80-6), § 391-35-010, filed 9/30/80, effective 11/1/80.]

WAC 391-35-020 Time for filing petition—Limitations on results of proceedings.

TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) Disputes about the appropriate bargaining unit placement for newly created positions;

(b) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate;

(c) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration;

(d) Disputes under WAC 391-35-320 concerning status as a confidential employee; or

(e) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A petition concerning supervisory status under WAC 391-35-340 or regular part-time status under WAC 391-35-350 will be considered timely if:

(a) All parties agree to raise the issue;

(b) The petitioner demonstrates that it put the other party on notice during negotiation for the most recent collective bargaining agreement that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding and the petitioner files the petition before ratification of the current collective bargaining agreement; or

(c) The petitioner demonstrates through evidence that a substantial change in circumstances occurred within a reasonable time before the filing of the petition and that the change in circumstances warrants a modification of the bargaining unit by inclusion or exclusion of a position or class.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit if the petition was timely filed as provided in subsections (1) and (2) of this section.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding if:

(a) The petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions;

(b) The existing bargaining unit is the only appropriate unit for the employees or positions; or

(c) All parties to the proceeding agree the agency should rule upon the request for clarification.

(5) An order clarifying bargaining unit will not be issued under this section if:

(a) Employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances; or

(b) Adding the disputed employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

(6) An appropriate bargaining unit of classified employees at a school district or educational service district may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-020, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-020, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-020, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-020, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-020, 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 88-12-061 (Order 88-03), § 391-35-020, filed 5/31/88.]

WAC 391-35-030 Petition—Filing and service. A unit clarification petition may be filed through the agency's online e-filing system, by email, or in writing to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the petition is not filed jointly, the party filing the petition shall serve a copy on the other party to the collective bargaining relationship, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-030, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-030, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-030, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-35-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-030, 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 80-14-047 (Order 80-6), § 391-35-030, filed 9/30/80, effective 11/1/80.]

WAC 391-35-050 Contents of petition filing forms. Each completed unit clarification 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, including:

(a) The name, email address, mailing address, and telephone number of the employer and of the employer's representative; and

(b) The name, email address, mailing address, and telephone number of the exclusive representative and of its principal representative.

(2) Information concerning the parties' relationships, including:

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

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

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

(b) The status of negotiations between the parties, indicating that:

(i) The parties' contract is closed; or

(ii) The parties are currently in contract negotiations;

(c) The description of the existing bargaining unit, specifying inclusions and exclusions;

(d) The number of employees in the bargaining unit; and

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

(3) An explanation of the proposed change and the reasons for the proposed change, including identification of the position(s), classification(s), or group(s) at issue; the number of employees in each position, classification, or group; and the bargaining unit status of each position, classification, or group.

(4) Identification of other interested employee organizations, including the name, email address, and mailing address of any other employee organization(s) claiming to represent any employee affected by the proposed clarification(s) and a brief description of any contract(s) covering those employees.

(5) Any other relevant facts.

(6) The name(s), signature(s), and title(s), if any, of the person(s) filing the petition as well as the date(s) of the signature(s).

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-050, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-050, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-050, 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 80-14-047 (Order 80-6), § 391-35-050, filed 9/30/80, effective 11/1/80.]

WAC 391-35-070 Amendment and withdrawal. A petition may be amended or withdrawn by the petitioner(s) under any conditions the executive director or the commission may impose.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-070, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-070, 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 80-14-047 (Order 80-6), § 391-35-070, filed 9/30/80, effective 11/1/80.]

WAC 391-35-085 Amendment of certification. A party may file a petition to amend an existing certification to reflect a minor change in circumstances, such as a change of an employee organization's name or an employer's name, and the executive director may amend the certification if the amendment does not add or remove positions from the existing bargaining unit or change the bargaining unit's configuration and there is no question concerning representation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-085, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070. WSR 08-15-032, § 391-35-085, filed 7/9/08, effective 8/9/08.]

WAC 391-35-090 Notice of hearing. If it appears to the executive director or designee that a disagreement exists which could be the basis for issuing an order clarifying the bargaining unit(s), a notice of hearing will be issued and served on the parties. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-090, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.434. WSR 01-14-009, § 391-35-090, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-090, 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 80-14-047 (Order 80-6), § 391-35-090, filed 9/30/80, effective 11/1/80.]

WAC 391-35-110 Coordination of proceedings. (1) If a petition for clarification under this chapter is pending at the same time as a petition under chapter 391-25 WAC involving all or any part of the same bargaining unit, the proceedings under this chapter must be suspended, and all issues concerning the description of the bargaining unit must be resolved in the proceedings under chapter 391-25 WAC.

(2) A unit clarification proceeding may control or be controlled by an unfair labor practice proceeding. If a petition for clarification under this chapter is pending at the same time as a complaint un-

der chapter 391-45 WAC involving all or any part of the same bargaining unit, the executive director or designee has discretion to withhold processing of one of the related proceedings pending the outcome of the other related proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-110, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.070. WSR 01-14-009, § 391-35-110, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-110, 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 80-14-047 (Order 80-6), § 391-35-110, filed 9/30/80, effective 11/1/80.]

WAC 391-35-130 Hearings—Who may conduct. Hearings may be conducted by the commission, the executive director, or a member of the agency staff. At any time, a hearing officer may be substituted for the hearing officer previously assigned.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-130, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-073, § 391-35-130, 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 80-14-047 (Order 80-6), § 391-35-130, filed 9/30/80, effective 11/1/80.]

WAC 391-35-170 Hearings—Reopening of hearing—Briefs. (1) Hearings are public, unless a protective order is issued under WAC 10-08-200(7), and are limited to matters concerning the clarification of the existing bargaining unit.

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

(b) The hearing officer shall ascertain the respective positions of the parties to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

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

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

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

(5) Any brief must be filed and served as required by WAC 391-08-120.

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

(a) It files and serves a motion for permission to file a longer brief to address novel or complex issues; and

(b) The executive director, the executive director's designee, or the hearing officer grants the motion for good cause shown.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-170, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-170, 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, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-170, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-170, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-170, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-35-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.59.080 and 53.18.015. WSR 90-06-073, § 391-35-170, 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 80-14-047 (Order 80-6), § 391-35-170, filed 9/30/80, effective 11/1/80.]

WAC 391-35-190 Proceedings before the executive director. (1)

The executive director may proceed upon the record, after submission of briefs or after hearing, as appropriate. The executive director shall determine the status of each position, classification, or group of employees at issue and issue an order clarifying the bargaining unit, dismiss the petition, or make other disposition of the matter.

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

(3)(a) A party seeking review by the commission of an interlocutory decision of the executive director, the executive director's designee, or a hearing officer must file a motion for discretionary review with the commission and a copy with the 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, the executive director's designee, or a hearing officer will be accepted by the commission only:

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

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

(iii) If the executive director, 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 immediate review by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed 15 pages (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 interlocutory decision or the issues pertaining to that decision.

(4) Unless appealed to the commission under WAC 391-35-210, a decision issued under this section is the final order of the agency with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-190, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-190, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-35-190, filed 7/1/98, effective 8/1/98; WSR 90-06-073, § 391-35-190, 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), § 391-35-190, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-190, filed 9/30/80, effective 11/1/80.]

WAC 391-35-210 Appeals. An order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal 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) If an order has been appealed, the due date for a notice of cross-appeal by other parties 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 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 that desires to cite or reassert a document previously filed in the matter must do so by reference to the document already on file and shall not file or attach another copy of the document to documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal must be filed and served as required by WAC 391-08-120.

(6) The due date for any appeal brief that the party filing an appeal or cross-appeal desires to have considered by the commission is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief must be filed and served as required by WAC 391-08-120.

(7) The due date for any responsive brief that a party desires to have considered by the commission is 14 days following the date on which that party is served with an appeal brief. Any brief must be filed and served as required by WAC 391-08-120(1).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Requests to extend the due date may only be considered if made by the date the brief is due and

in compliance with WAC 391-08-180. Extensions of time may not be routine or automatic.

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

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

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

(10) Any motion filed under subsection (9) 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 the motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-210, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.56.060, 41.56.090, 41.58.050. WSR 08-04-059, § 391-35-210, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. WSR 00-14-048, § 391-35-210, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-210, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-210, 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), § 391-35-210, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-210, filed 9/30/80, effective 11/1/80.]

WAC 391-35-250 Commission action on appeals. If an order is appealed under WAC 391-35-210, the entire record in the proceedings must be transmitted to the commission. 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 status of each position, classification, or group covered by the appeal and issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-250, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. WSR 00-14-048, § 391-35-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-250, 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 80-14-047 (Order 80-6), § 391-35-250, filed 9/30/80, effective 11/1/80.]

WAC 391-35-310 Employees eligible for interest arbitration. Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration may not be included in bargaining units with employees occupying positions that are not eligible for interest arbitration.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-310, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.430. WSR 96-07-105, § 391-35-310, filed 3/20/96, effective 4/20/96.]

WAC 391-35-320 Exclusion of confidential employees. Confidential employees excluded from all collective bargaining rights are limited to:

(1) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, and the role of that person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(2) Any person who assists and acts in a confidential capacity to such person.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-320, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.030(2) and 41.59.020 (4)(c)(i) and (ii). WSR 01-14-009, § 391-35-320, filed 6/22/01, effective 8/1/01.]

WAC 391-35-330 One-person bargaining unit inappropriate. A bargaining unit cannot be considered appropriate if it includes only one employee.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-330, filed 6/22/01, effective 8/1/01.]

WAC 391-35-340 Unit placement of supervisors—Bargaining rights of supervisors. (1) It is presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates to avoid a potential for conflicts of interest that would otherwise exist in a combined bargaining unit.

(2) It is presumptively appropriate to include persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") in separate bargaining units for the purposes of collective bargaining.

(3) The presumptions set forth in this section are subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-35-340, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-340, filed 6/22/01, effective 8/1/01.]

WAC 391-35-350 Unit placement of regular part-time employees—Exclusion of casual and temporary employees. (1) It shall be presumptively appropriate to include regular part-time employees in the same bargaining unit with full-time employees performing similar work, in order to avoid a potential for conflicting work jurisdiction claims which would otherwise exist in separate units. Employees who, during the previous twelve months, have worked more than one-sixth of the time normally worked by full-time employees, and who remain available for work on the same basis, shall be presumed to be regular part-time employees. For employees of school districts and educational institutions, the term "time normally worked by full-time employees" shall be based on the number of days in the normal academic year.

(2) It shall be presumptively appropriate to exclude casual and temporary employees from bargaining units.

(a) Casual employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to have had a series of separate and terminated employment relationships, so that they lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

(b) Temporary employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

(3) The presumptions set forth in this section shall be subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-350, filed 6/22/01, effective 8/1/01.]

WAC 391-35-356 Special provision—State civil service employees.

(1) For employees covered by chapter 41.06 RCW who work less than full-time, it shall be presumptively appropriate to include those employees in the same bargaining unit with full-time employees performing similar work.

(2) The presumption set forth in this section is intended to avoid excessive fragmentation and a potential for conflicting work jurisdiction claims which would otherwise exist in separate units of full-time and less than full-time employees.

(3) The presumption set forth in this section shall be subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.80.005(6) and [41.80].070(1). WSR 03-03-064, § 391-35-356, filed 1/14/03, effective 2/14/03.]