



PORT OF SEATTLE POLICE CIVIL SERVICE RULES

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1. GENERAL PROVISIONS.

1.1 AUTHORITY AND APPLICATION. These rules are promulgated under the authority granted by Chapter 41.12 RCW, and Port Resolution 3423. They apply to proceedings before the Civil Service Commission.

1.2 SCOPE AND PURPOSE. These rules govern the continuing administration of the Civil Service System of the Port. Their purpose is to assure that the Port Civil Service System is administered in accordance with all applicable resolutions of the Port and that all proceedings before the Commission are conducted in an orderly, fair and timely manner. No employee may have a property interest in or as a result of these rules.

1.3 PRESUMPTION OF VALIDITY. The Civil Service System implemented by these rules substantially accomplishes the purpose of Chapter 41.12 RCW. Variations from state models are based on local conditions and are intended to maintain the purposes of civil service systems: merit selection, tenure, and an independent civil service commission. These rules are presumed to be valid and will be upheld unless found to be in direct conflict with the purposes of Chapter 41.12 RCW.

1.4 SEVERABILITY. If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity will not affect other provisions or applications of these rules that can be given effect without the invalid provision or application, and to this end, any section or word is declared to be severable.

1.5 CONFLICT. In the event of a conflict between these rules and a collective bargaining agreement under Chapter 41.56 RCW, the provisions of the collective bargaining agreement will prevail.

2. ADMINISTRATION AND OPERATIONS.

2.1 MEMBERSHIP. The Commission shall be composed of three (3) members appointed by the Chief Executive Officer. The term of office shall be four (4) years. The starting date for the term for each Commission position shall be as set by the date of appointment. A member may be appointed to a maximum of two (2) consecutive terms. All members must be Washington state residents and may not be employees of the Port of Seattle.

2.2 COMMISSION MEETINGS. The Civil Service Commission shall meet in regular session at 10:00 a.m. on the first Tuesday in January, April, July and October. More frequent meetings may be called by the Chairperson or Vice-Chairperson as needed in order to conduct Commission business in a timely manner. The Chairperson may also call study sessions. All regular meetings of the Commission shall be public; except that the Commission may meet in executive session whenever authorized by state law. The Chairperson or the Vice-Chairperson of the Civil Service Commission may call meetings as necessary, by notice to each member of the Commission and appropriately announced in compliance with the Open Public

Meetings Act (OPMA), Chapter 42.30 RCW. Notice of the time, date, place and agenda of each special meeting shall be given at least twenty-four (24) hours in advance in compliance with requirements of the OPMA.

- 2.3 QUORUM. A majority of the members of the Commission, two (2) members, shall constitute a quorum for the transaction of regular business. If a quorum is not present at the appointed time, the members present shall wait fifteen (15) minutes before dismissing the meeting for lack of quorum.
- 2.4 TELEPHONIC OR VIDEO PARTICIPATION. A Commission member who is physically absent may participate in live meeting deliberations by audio or video conference, provided that he or she has the ability to listen to or view the proceedings, and the Police Civil Service Commission and the public have the ability to listen to or see the Commissioner. A Commissioner may vote by audio or video conference only when he or she has been able to hear or see the entire agenda item. This provision is specifically intended to facilitate the presence of a quorum when two (2) or more Commissioners are not available to participate in person or to accommodate a Commissioner who may be traveling. This procedure may also be used in other unforeseen circumstances. Except in case of an emergency or critical situation, or other unforeseen circumstance, at least one (1) Commissioner must be physically present to preside over the meeting when other Commissioners are participating by audio or video conference. Police Civil Service Commissioners participating by audio or video conference may vote upon a matter, provided they have been present through an audio or video conference for the entire presentation and discussion of the particular agenda item that is being voted upon. It is understood that participation by a Commissioner by audio or video conference is an unusual situation and should only occur when absolutely necessary.
- 2.5 AMENDMENT OF THE RULES AND REGULATIONS. The amendment of these Rules and Regulations, however, shall require an affirmative vote by a majority of all members of the Commission.
- 2.6 CHAIR--VICE CHAIR. At the first regular meeting in January of each year, the Commission will elect one (1) of its members to serve as Chair and another member to serve as Vice Chair. The Chair and Vice Chair will serve for a term of one (1) year, unless replaced by a majority vote of all Commissioners. Should a Chair or Vice Chair resign or be removed from the position before the expiration of his/her term, the Commission, upon appointment of a new member, will elect a new Chair and/or Vice Chair.
- 2.7 RULES OF ORDER. Robert's Rules of Order is the final authority on all questions of procedure and parliamentary law not otherwise provided by these rules. But with the concurrence of two (2) commissioners, such rules may be waived or modified.
- 2.8 ORDER OF BUSINESS. At all regular meetings, the order of business shall be as follows:

- (1) Call to order
- (2) Roll call
- (3) Approval of minutes of previous meetings
- (4) Reports
- (5) Unfinished business
- (6) New business
- (7) Adjournment

- 2.9 COMMISSIONERS--CHALLENGE. Any challenge to a commissioner sitting at a hearing must be made by an interested party submitting a written affidavit to the Chair or Vice Chair at least ten (10) calendar days before the hearing commences or as soon as possible after the party learns of the alleged interest, prejudice or close relationship that is the basis of the challenge. The Commission will review the affidavit and vote on the challenge before proceeding with the hearing. Upon the Commission's finding of cause for disqualification, the challenged commissioner will take no part in the hearing. Failure to timely raise a challenge constitutes a waiver of the challenge by the party unless, in the exercise of reasonable diligence, a basis for challenge is unknown to a party before the hearing commences.
- 2.10 COMMISSIONERS--ALTERNATES. The Commission has an alternate commissioner whose term expires on 12/31/2015. When the term of the current alternate commissioner expires, the position of alternate commissioner will also terminate. Alternate commissioners have the right to participate in the debate and the deliberations of the Commission on the regular business of the Commission. Alternate Commissioners may not be part of the Commission quorum and may not move action or vote on matters coming before the Commission, when a Commissioner is unable to participate in a hearing involving discipline or discharge. The alternate commissioner is entitled to participate fully in such proceedings and is authorized to vote on the action before the Commission. If, as a result of disqualification(s) pursuant to Rule 2.9 a lawfully constituted quorum is no longer available, the Chair (or Vice Chair, if necessary) will appoint one or more of the Alternates to serve on the Commission and the hearing will proceed.
- 2.11 OFFICE HOURS. The office address of the Commission is Port of Seattle, 2711 Alaskan Way, P.O. Box 1209, Seattle, WA 98111. The regular hours for receipt of Commission correspondence and notices are 8 a.m. to 5 p.m., Monday through Friday (excluding Port holidays), at the offices of Human Resources and Development.
- 2.12 PUBLIC RECORDS. Public Record Requests may be made via email public-disclosure@portseattle.org, in person, or via the Port of Seattle website www.portseattle.org, or by any other means consistent with the Washington Public Records Act, Chapter 42.56 RCW.
- 2.13 RECORD OF PROCEEDINGS. A record shall be made of all meetings. The Secretary-Chief Examiner shall be responsible for preparing accurate minutes which report all business discussed motions, votes, and other actions taken. This

record shall be signed by the Chair and the Secretary-Chief Examiner, and shall become a part of the permanent record.

2.14 REPORTS--APPLICANTS, ELIGIBLES, EMPLOYEES.

2.14.1 Each applicant, eligible and employee will keep the Commission informed, by written notice to the Secretary, of his/her current address and telephone number and will report any change of name through marriage or otherwise.

2.14.2 Each eligible will keep the Secretary informed, in writing, regarding his/her availability and any refusal to accept an appointment or promotion and the reasons therefor.

2.15 REPORTS--APPOINTING AUTHORITIES. An Appointing Authority will report to the Secretary in such detail and on such forms as the Secretary may prescribe:

2.15.1 Every appointment, transfer, promotion, demotion, reduction, layoff, reassignment, reinstatement, suspension without pay, or leave of absence without pay;

2.15.2 Every refusal or failure to accept appointment by a person whose name has been certified.

3. SECRETARY-CHIEF EXAMINER.

3.1 SECRETARY-CHIEF EXAMINER--APPOINTMENT. The Commission will appoint a Secretary-Chief Examiner ("Secretary") from among qualified Port employee(s) recommended by the Chief Executive Officer.

3.2 SECRETARY--AUTHORITY. In addition to acting as Secretary of the Commission, the Secretary will:

3.2.1 Serve as the general manager and executive officer of the Commission;

3.2.2 Delegate duties when necessary and supervise the work of the Commission, including preparing, conducting, and scoring examinations and maintaining the classification plan;

3.2.3 Report to the Commission from time to time as directed concerning the details of the work of the Commission;

3.2.4 Maintain the budget for the Commission, approve accounts, and generally administer the expenditure of funds appropriated by the Port Commission for the operation of the Commission;

3.2.5 Determine which examinations will be conducted, the minimum qualification of applicants, the subjects to be covered in each examination, methods of testing, and the relative weights to be given to the various parts of the examination; supervise the conduct of the examinations; after obtaining legal advice from the Commission's legal counsel, decide all questions relating to the eligibility of applicants, the admissibility of applicants to the examinations, and extension of time and all questions arising during the course of an examination; report before and after each examination to the Commission, including all appeals from rulings or appeals from any part of the examination.

3.2.6 Perform all other functions necessary for the proper carrying-out of these rules and the provisions of law relating to the Civil Service System, and perform such additional duties as the Commission assigns from time to time.

4. DEFINITIONS.

The following words and phrases shall have the meanings hereinafter described unless the context in which they are included clearly indicates otherwise.

4.1 APPOINTING AUTHORITY. The Department Police Chief or designee.

4.2 ASSIGNMENT. Movement of an employee to a position that carries additional salary and additional limited responsibilities and is within the scope of the specification for the class from which the assignment is made.

4.3 CANDIDATE. Any applicant who has completed, or is in the process of completing, a Civil Service examination.

4.4 CAUSE. A fair and honest reason for discipline, including suspension, demotion or discharge, exercised in good faith by the Appointing Authority based upon facts that (a) are supported by substantial evidence; (b) are reasonably believed by the appointing authority to be true; and (c) are not for any arbitrary, capricious or illegal reason.

4.5 CERTIFIED ELIGIBLE LIST. ("Certification"). A list of names from an eligible register transmitted by the Secretary of the Commission to an Appointing Authority from which such Appointing Authority may fill a vacancy.

4.6 CERTIFY. To verify to the Appointing Authority that a list of names of candidates for employment has been selected from the list of persons tested and found eligible for employment.

4.7 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer of the Port of designee.

- 4.8 CLASS. A position or group of positions designated by the Commission as having similar duties and responsibilities, so that the same examination may be used for each position in the group.
- 4.9 CLASS SPECIFICATION. A description of the essential characteristics of a class and the factors and conditions that separate it from other classes, written in terms of duties, responsibilities and qualifications.
- 4.10 CLASSIFICATION PLAN. A class specification will be prepared and maintained for each class in the Civil Service System.
- 4.11 COMMISSION. The Police Civil Service Commission.
- 4.12 DEMOTION. Removal of an employee, for cause, from a higher to a lower class of employment.
- 4.13 DISCHARGE. The separation of a permanent employee from the service for cause.
- 4.14 ELIGIBILITY LIST. A list of persons arranged in order of final score from a selection process who are eligible for regular appointment to a position in a specific Civil Service rank.
- 4.15 EMPLOYEE. Anyone holding a position in the Civil Service System of the Port.
- 4.15.1 EMPLOYEE--REGULAR. Any employee who has been appointed from a certification and who has satisfactorily served the full probationary period.
- 4.15.2 EMPLOYEE--TEMPORARY. Any employee appointed to fill an emergency, temporary or short-term need.
- 4.15.3 EMPLOYEE--EXEMPT. Any employee in a position of employment that is not subject to Civil Service rules and regulations and in which one serves at the discretion of the Appointing Authority.
- 4.15.4 EMPLOYEE--PROBATIONARY. A person appointed from a certification who has not yet completed the specified trial period of employment.
- 4.15.5 EMPLOYEE--PROVISIONAL. Any employee appointed to a classified position for which there is no current eligibility list.
- Note: A regular employee is the only employee with rights under Rule 18.1.
- 4.16 ENTRY LEVEL. An entry level list is a list of persons, who may or may not be current members of the Civil Service, who have passed the scored portion of the

examination for the lowest rank of entry to service. Entry level applicants may compete in any entry level selection process only if one (1) year has elapsed since the applicant last competed in any entry level examination.

- 4.17 EXAMINATION. The process of testing the fitness and qualifications of applicants for positions in a class.
- 4.17.1 EXAMINATION--OPEN. An examination open to any member of the public meeting the requirements as stated in the official bulletin announcing the examination.
- 4.17.2 EXAMINATION--CLOSED. An examination limited to employees meeting the requirements stated in the official bulletin announcing the examination.
- 4.18 LATERAL ENTRY LEVEL. A lateral entry level list is a list of persons who are currently sworn Police Officers or Dispatchers in other jurisdictions and who have passed the scored portion of the examination for transfer to an entry level position in the Civil Service.
- 4.19 LIST. A list of candidates for employment who have passed an employment examination, whose names may be chosen and certified by the Secretary for submission to the Appointing Authority for consideration for employment.
- 4.20 PORT. The Port of Seattle.
- 4.21 PROBATION or PROBATIONARY. The status of an employee during a trial period following a regular appointment from an eligibility list. This trial period is part of the examination process and is a working test during which an employee is required to demonstrate, by actual performance of the duties, fitness for the position to which he/she has been certified and appointed.
- 4.22 PROMOTION. The appointment of an employee to a higher class. Any change in employment other than by a temporary or provisional appointment from a lower class to any position in any higher class in the same promotional series of classes as determined by the Commission constitutes a promotion.
- 4.23 PROMOTIONAL. A promotional list is a list of current members of the Department who have passed the scored portion of the examination for promotion to a higher rank.
- 4.24 REASSIGNMENT. A change from one position to another position under the jurisdiction of the Appointing Authority in accordance with state and federal law because the employee can no longer perform the essential functions of the employee's current position, with or without reasonable accommodation.
- 4.25 REDUCTION. The movement of an employee from a higher class to a lower class of employment for reasons other than cause.

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- 4.26 REINSTATEMENT. Reappointment of a regular employee to a position in a class in which the employee was a regular employee. All reinstated employees must meet the same standards for physical and mental health that are required for current active members.
- 4.27 REINSTATEMENT LISTS. A reinstatement list is a list of persons who have achieved regular Civil Service status at the Port and who have been reduced in rank and/or separated from the Civil Service because of changes in duties in the organization, a reorganization of positions, abolition of a position or service, a lack of work, or a shortage of funds.
- 4.28 SUSPENSION. Temporary removal of an employee from employment with or without pay, for cause, or pending determination of charges against the employee that could result in demotion or discharge.
- 4.29 TRANSFER. A change in employment or status from a position in one class to a position in the same class, not a promotion, reduction, demotion or reclassification.
- 4.30 VETERANS' PREFERENCE. Preference in examinations and employment, based on military service, as provided and defined by applicable laws.
5. RULE-MAKING.
- 5.1 EFFECT OF RULES. The terms and conditions of Civil Service employment are governed by these Rules and Port resolution. No employee may have a property interest in or as a result of these rules. These Rules, and rules the Commission may enact, regulate the mode and appointment of tenure in the Civil Service, and employees are subject to these Rules and amendments thereto.
- 5.2 LABOR AGREEMENT. In the event of a conflict between these Rules and the terms and conditions of any collective bargaining agreement, the collective bargaining agreement shall control the employment relationship and these Rules shall have no effect.
6. EFFECT OF CLASSIFICATION CHANGES ON INCUMBENT.
- 6.1.1 Whenever the title of a class is changed without a change in duties or responsibilities, the incumbent will have the same status in the retitled class as held in the former class.
- 6.1.2 Whenever a position is reclassified from one class to a higher class, the incumbent may not continue in the same position, except temporarily, without gaining eligibility for the new class by examination and receipt of an appointment in accordance with these Rules.
- 6.1.3 Whenever a position is reclassified from one class to a lower class, the regular incumbent may, with the concurrence of the Appointing

Authority and the Commission, take a voluntary reduction to the lower class or, at the employee's option and with the concurrence of the Appointing Authority and the Commission, may remain in the reclassified position temporarily as limited by the Commission until the employee is transferred to another position in the class in which he/she has regular standing.

7. RECRUITMENT.

7.1.1 ANNOUNCEMENT OF EXAMINATIONS for positions covered by Civil Service shall be publicly announced by the Secretary. These examination announcements shall, not be less than seven calendar days before the closing date, be posted in a manner generally prescribed by Human Resources and Development Department. If the examination is also open to persons who are not already in the Department's Civil Service, the Secretary shall also advertise the examination in the appropriate labor market(s) not less than seven calendar days before the closing date.

All examination announcements shall include the following information:

- (a) Position, title, and salary range
- (b) Brief description of the position's duties and responsibilities
- (c) Minimum qualifications required for applicants
- (d) Instructions for applying and last date for filing applications
- (e) Summary of the selection process which will be followed
- (f) Duration of validity of the list
- (g) Statement that the Port is an Equal Opportunity Employer.

All applicants for examinations for positions in the Civil Service must file a written application on a form prescribed by the Secretary by the stated deadline as indicated in the announcement.

7.1.2 To file an application for examination, the applicant must:

- (a) Meet the requirements specified in these Rules and in the official examination bulletin as of the closing day of the official filing period; and
- (b) Produce evidence of education, training, experience, or any lawful requirement for a class, as directed by the Secretary.

7.2 SPECIAL REQUIREMENTS.

7.2.1 The Secretary may prescribe such limits and such other specific requirements, physical or otherwise, as in the Secretary's judgment are required by and related to the work to be performed.

- 7.2.2 When the official bulletins so designate, the Secretary may permit an applicant to file not more than six (6) months under the specified minimum age on an open examination and not more than one (1) year under the specified experience on a closed examination. A successful candidate will have delayed eligibility until the required minimum age or experience is attained.
- 7.3 **CONDITIONAL ADMISSION.** If the Secretary reasonably doubts whether the applicant meets the minimum requirements, the Secretary may order that the applicant be admitted to the examination on the condition that the particular requirements are met to the satisfaction of the Secretary before the applicant is enrolled on an eligibility list.
- 7.4 **REJECTION OF APPLICANT OR ELIGIBLE.** The Secretary may reject an applicant for examination, withhold the applicant from a list or from certification, or remove from a list the name of an eligible under the following circumstances:
- 7.4.1 **FAILURE TO MEET REQUIREMENTS.** It clearly appears that the applicant does not meet the minimum requirements set forth in these Rules or in the public notice of the examination.
- 7.4.2 **FALSE STATEMENT.** The applicant has made a material false statement or has attempted any deception or fraud in connection with this or any other Civil Service examination.
- 7.4.3 **FAILURE TO APPEAR.** Any admitted or conditionally admitted applicant who fails to appear at a scheduled examination or any scheduled test or part thereof is considered to have failed the examination or test.
- 7.5 **DEBARMENT FROM EMPLOYMENT.**
- 7.5.1 No one who has been dismissed from the Civil Service for cause involving moral turpitude may reenter the Civil Service, and anyone dismissed for other good cause may reenter the Civil Service only by express consent of the Secretary.
- 7.5.2 Any applicant for appointment, promotion, reemployment, increase of salary, or other personal advantage who directly or indirectly pays or promises to pay any money or other valuable thing to anyone whomever for or on account of such actual or prospective advantage, is ineligible for any further employment in the Civil Service.
- 7.6 **NOTICE OF NONACCEPTANCE.** Anyone against whom action is taken under Rule 7.4 will be notified promptly by the Secretary of the reasons therefore by written notice to the applicant or eligible.

7.7 ADMISSION TO EXAMINATION PENDING APPEAL. The Secretary may admit to the examination anyone whose application was not accepted, pending final disposition of an appeal, such admission to be without prejudice to either the Port or the applicant.

8. EXAMINATIONS.

8.1 ORDERING EXAMINATIONS. An examination will be ordered whenever it is deemed to be in the best interest of the Port. The Secretary will administer examinations as provided by these rules. A special examination may be ordered when a Port employee not currently employed in a Civil Service protected position is seeking, as an accommodation, placement in a Civil Service protected position through the Port's medical placement process, consistent with Port policy HR-6.

8.2 EXAMINATION ANNOUNCEMENT. Public notice of examinations must be given by the Secretary or the Appointing Authority the manner generally prescribed by the Human Resources and Development Department.

8.3 NUMBER OF APPLICANTS--LIMITATIONS. The Secretary may restrict the number of qualified applicants to be examined at any one time whenever an examination for a position is likely to attract large numbers of qualified applicants and when job-related testing processes are prohibitively costly or impractical to administer to all qualified applicants or may have adverse impact on protected groups.

8.3.1 MINIMUM SCORES. If a minimum passing score is required, the Secretary determines the score before the examination or examination posting.

8.3.2 MULTIPART EXAMINATION. When an examination consists of two or more parts, the Secretary may:

- (a) Set a minimum score to be required in any part of such examination. Any applicant who fails to attain such minimum score fails the entire exam and is not entitled to take the balance of the exam.
- (b) Assign weights to each part of the examination, with the examinee's earned examination score equaling the weighted average of the scores on each part.
- (c) Limit eligibility in subsequent exam parts to those scoring highest on a preliminary test or series of tests. But, the number of examinees must be established before the preliminary tests are administered.

8.4 CONTINUOUS EXAMINATIONS. A continuous or periodic examining program may be ordered and administered by the Secretary for any class of positions.

8.4.1 The Secretary may authorize the merging of 1) an entry level eligibility list which has not yet expired with a subsequent entry level list or 2) a lateral list which has not yet expired with a subsequent lateral entry list, when the selection processes used to create the lists are the same or substantially similar in content, design and scoring standards and when there exists a reasonable basis for comparing the performance of the applicants in both. The lists shall be merged as follows:

- (a) All names still active on the original list shall remain active on the merged list until the expiration date of the original list.
- (b) Names of eligibles qualified in subsequent examination shall remain active for one (1) year from the date of creation of the merged list unless the Secretary approved a longer life at the time the merged list was requested, or the Secretary otherwise revokes or extends the life of the merged list in accordance with these Rules.
- (c) Persons who attain a passing score in the subsequent selection processes shall be inserted on the existing list in order of their final scores without respect to the time of the selection processes.

8.4.2 To expedite certification and appointment and to maintain security of examination material, no keyed copy of the written test will be provided except upon approval by the Commission. The eligibility list may be promulgated immediately after the results are obtained.

8.4.3 Except as above provided, the rules applicable to other examinations will apply to continuous and periodic examinations.

8.5 **CHARACTER OF EXAMINATIONS.** All examinations must be competitive, impartial, and practical in their character. When practicable, examinations will be designed to qualify and rank applicants in terms of their relative fitness to perform the duties of the class for which the examination was ordered. An examination is deemed to be competitive when applicants are tested as to their relative qualifications and abilities or when a single applicant is scored against a fixed standard.

8.6 **CONTENT OF EXAMINATIONS.** Examinations may include oral or written tests, physical or performance tests, assessment centers, evaluations of training and experience, interviews, any other suitable evaluation of fitness, or any combination of such tests. Examinations may evaluate education, experience, aptitude, knowledge, skill, physical condition, personal characteristics and other qualifications to determine the fitness of the candidates.

- 8.7 **QUALIFYING GRADE.** When any part or parts of an examination relate to qualifications deemed essential to the proper performance of the duties of the class, the Secretary may determine the minimum qualifying grade for each such part or parts. Failure to attain such grade disqualifies an examinee, without regard to overall examination grade and disqualifies the examinee from participating or rating on other parts of the examination.
- 8.8 **SPECIAL SKILLS EXAMINATIONS.** Upon showing from the Department that special training and knowledge is essential to the proper filing of the vacancy, the Commission may limit an examination to such qualified applicants.
- 8.9 **EXAMINATION APPEALS.**
- 8.9.1 **APPEAL.** An applicant who believes that there is an error in the format or content of a step in the selection process, or who believes there has been an error in the way a step in the selection process has been administered, may file an appeal with the Secretary within three (3) business days of the administration of that step of the selection process.
- All appeals must be in writing, must include a description of the specific item the applicant believes was in error, the reasons why the applicant believes that item is in error, and the correction the applicant believes should be made. Any clerical error may be corrected by the Secretary in response to an appeal or upon discovery of the error at any time during the life of the list, but no such correction will affect an appointment made from a certification made prior to the correction. For the purpose of this section, a clerical error is an error which is mechanical in nature, such as errors in transcriptions, copying, writing, or computation.
- 8.9.2 **RESPONSE TO APPEAL.** Upon receiving an appeal the Secretary-Chief Examiner shall review the items appealed and determine if there is merit to the appeal. If the Secretary-Chief Examiner determines there is merit to the appeal, he/she shall take action as needed to correct the problem. He/she may consult with any technical experts he/she deems appropriate in order to competently resolve the appeal. The Secretary-Chief Examiner shall notify the applicant in writing of his/her determination concerning the appeal.
- 8.10 **EFFECTIVE DATE OF EXAMINATION RESULTS.** Results of an examination shall become effective on the date the results are certified by the Secretary.
- 8.11 **REEXAMINATION.**
- 8.11.1 If an eligible takes a succeeding examination for the same class, the result of such examination does not nullify any remaining eligibility already established. Eligibility attained by the second examination

is entered on the list, and the eligibility that provides the greatest advantage to the eligible is used.

8.11.2 No one may be reexamined for the same class within five (5) years of the effective date of the examination if the reason for disqualification of the applicant was based on background screening, unless the Secretary determines that reexamination would be in the best interest of the Port.

8.12 EXAMINATION TESTS. Examination tests of each eligible are maintained consistent with examination administration procedures or applicable record retention laws.

8.13 ADDITIONAL EXAMINATION.

8.13.1 Eligibles certified pursuant to Rule 9 are subject to medical, physical, or psychological examination and to such other examinations administered by the Department. Such other examinations include, but are not limited to, background examination and polygraph (polygraph examination is allowed only under RCW 49.44.120).

9. ESTABLISHMENT OF ELIGIBILITY LISTS.

The Secretary may, upon request of the appointing authority, authorize the establishment of lists for entry level, lateral entry level, promotional and reinstatement lists of persons. After each examination, an eligibility list for the class will be prepared on which the names of successful candidates are ranked as follows:

9.1.1 Relative rank is determined by the examination rating or grade, plus the percentage allowed by law for veterans' preference; ~~except that a separate eligibility list shall be created for preference in rank shall be given to~~ an employee who requires a reasonable accommodation under Rule 8.1 or 9.1.5 and in accordance with state and federal law, and that individual will be given priority over others not already in the process.

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9.1.2 Priority of time of examination does not give any preference in rank on the list.

9.1.3 The preferences in rank of eligibles having equal final general averages are determined as follows, in the order stated:

(a) The one who qualifies for veterans' preference in accordance with Washington state law.

- (b) When the examination comprises two or more parts with separate grades, again in the order stated:
 - (1) The highest grade on the most heavily weighted part of the examination; if a tie still exists, the highest grade on the next most heavily weighted part, and so on for as many parts as the examination contains.
 - (2) The highest grade on the written test if all parts are weighted equally.
- (c) When the examination has only one part or the candidates have the same standing under (a) and (b) above, if one is a regular Port employee and the others are not, the regular Port employee has preference.
- (d) By lot.

9.1.4 If an applicant is permitted by the Appointing Authority to file for and take an examination for delayed eligibility, and if such applicant succeeds in the examination, eligibility is held in abeyance until the candidate meets the requirements for eligibility, which must be reported in writing. If otherwise eligible, the candidate's name is placed on the list in accordance with this Rule. Any such eligibility expires with that of other eligibles from the same examination.

9.1.5 An employee who is already in a Civil Service protected position considered for reassignment may be placed; ~~without further examination or tests,~~ on the eligibility list for any vacant position under the jurisdiction of the Appointing Authority and for which the employee is qualified. Further examination or testing may be waived with the agreement and approval of the Appointing Authority and the Chief Examiner that the employee has already demonstrated requisite knowledge, skills and ability to perform the position.

- (a) A "vacant" position means that the position is available when the employee asks for a reasonable accommodation or that the Port knows that it will become available within a reasonable amount of time.
- (b) An employee is "qualified" for a position if the employee (i) satisfies the requisite skill, experience, education, and other job-related requirements of the position and (ii) can perform the essential functions of the new position, with or without reasonable accommodation. There is no obligation for the Port to assist the individual to become qualified.

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(c) The Port may require that the employee pass a medical, physical, psychological, or other examination administered by the Department in accordance with Rule 8.13.1 before the employee returns to work.

9.1.6 A Port employee, not currently in a Civil Service protected position, considered for reassignment may be placed on the eligibility list for any vacant position under the jurisdiction of the Appointing Authority and for which the employee is qualified.

(b) A "vacant" position means that the position is available when the employee asks for a reasonable accommodation or that the Port knows that it will become available within a reasonable amount of time.

(b) An employee is "qualified" for a position if the employee (i) satisfies the requisite skill, experience, education, and other job-related requirements of the position and (ii) can perform the essential functions of the new position, with or without reasonable accommodation. There is no obligation for the Port to assist the individual to become qualified.

~~(e)~~ (c) The Port will require that the employee pass a medical, physical, psychological, or other examination administered by the Department in accordance with Rule 8.13.1 before the employee returns to work.

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9.2 APPOINTMENT WITHOUT EXAMINATION. Except as provided in Rules 9.0 and 9.1.5, any return to the Civil Service is by examination only.

9.3 AVAILABILITY OF ELIGIBLES. Upon approval of the Secretary, the name of an eligible who submits a written statement restricting the conditions under which available for employment may be withheld from certifications that do not meet the conditions specified.

9.4 CANCELLATION OF ELIGIBILITY. Anyone's name may be removed from an eligibility list for any of the following reasons:

9.4.1 For failure to pass a required examination; upon receipt of proof of medical or physical disability that ~~the employee~~ cannot be accommodated through reasonable accommodation ~~in accordance with state and federal law~~; for bad character or other unfitness or inability to perform the duties of the position consistent with the Port's principles of Accountability, Integrity, and Leadership; fraudulent conduct or false statements by the eligible or by others with the eligible's collusion, in connection with any application, examination for, or securing of an appointment;

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- 9.4.2 For a previous unsatisfactory work record with the Port, dismissal from the Port for cause, or dismissal from any position, public or private, for any cause that would be a cause for dismissal from the Port;
- 9.4.3 For failure to respond to call, failure to submit requested information, or refusal to accept employment within fourteen (14) calendar days of the call, request, or offer;
- 9.4.4 For failure to respond to the canvass of a register within fourteen (14) calendar days from such canvass;
- 9.4.5 For declining the invitation to interview after being offered three separate interview opportunities.

9.5 CANCELLATION OF ELIGIBILITY--NOTICE TO ELIGIBLE. Before striking an eligible's name from a list, the Secretary must give the eligible written notice setting forth the causes for removal. Within five (5) business days after the date of mailing or service of such notice, the eligible may file a written statement with the Secretary explaining or justifying the causes set forth in the notice. The Secretary will consider all timely filed statements and take such action as is appropriate. Notice under this section is not required in the event of an eligible's voluntary removal from a list.

10. CERTIFICATION AND APPOINTMENT.

10.1 GENERAL PROVISIONS. Vacancies in the classified Civil Service are filled by temporary appointment, reinstatement, promotional appointment, assignment, original appointment, transfer, reduction, or demotion. In the absence of an appropriate list, the Secretary may authorize a provisional appointment.

10.2 REQUEST FOR CERTIFICATION. Whenever the Appointing Authority wishes to fill a vacancy, it submits a request for certification to the Secretary. The request shall show the number of positions or vacancies to be filled and the class title.

10.3 CERTIFICATION OF ELIGIBLES.

10.3.1 ELIGIBLE LIST. Certification to fill a vacancy is made by the Civil Service from the list available for the position.

10.3.2 NUMBER.

- (a) ENTRY LEVEL. The Secretary certifies to the Appointing Authority the names of the five (5) available eligibles or fifteen percent (15%) of the total available eligibles, whichever is greater, who stand highest on the appropriate list.

- (b) **PROMOTION.** The Secretary certifies to the Appointing Authority the names of the five (5) available eligibles who stand highest on the appropriate list.
- 10.3.3 **MULTIPLE VACANCIES.** If two (2) or more vacancies are to be filled, the name of one (1) additional person is certified for each additional position.
- 10.3.4 **SPECIAL SKILLS.** When special experience, training or skills are requested in writing by the Appointing Authority as being necessary for satisfactory performance in a particular position, a certification under Rule 10.3.2 is made of only the highest-ranking eligibles who possess the special qualifications.
- 10.4 **DEFERMENT OF CERTIFICATION.** The Secretary may defer certification of an eligible upon the eligible's written request with satisfactory reason therefor. Such deferment will thereafter prevent certification of such eligible until the next vacancy occurring after the eligible has notified the Secretary in writing that he/she desires to be returned to the list, and the Secretary has approved such return.
- 10.5 **DURATION OF CERTIFICATION.** Certification is in effect for 120 days from its date of issuance. The Appointing Authority must file with the Secretary a report of any appointment from such certification. Upon request, the Secretary may extend such certification for additional thirty (30) day periods. Expiration of eligibility does not cancel the validity of a certification. Once the background check has been initiated for an eligible, the eligible cannot lose his or her certification, even if new eligibles with higher scores have been placed on the list.
- 10.6 **REGULAR APPOINTMENT.** A regular appointment to fill a vacancy may be made from the names contained on the official certification.
- 10.7 **PROVISIONAL APPOINTMENT.**
 - 10.7.1 **WITHOUT LIST.** When there is no suitable eligibility list from which certification can be made, the Appointing Authority may make a provisional appointment. A provisional appointment may be made for up to twelve (12) months and may be extended.
 - 10.7.2 **WITH LIST.** All provisional employment in a class must cease at the earliest possible date and may not exceed thirty (30) calendar days from the date of notice that a proper eligibility list for such class is available. But, the Secretary may grant an extension upon satisfactory written showing by the Appointing Authority, if such extension will not cause the provisional appointment to exceed the twelve (12) month limitation.

11. PROBATION.

11.1 PROBATIONARY PERIOD. After each appointment from an eligibility list, the employee appointed serves a complete period of probation before the appointment is deemed complete. The probationary period provides a trial period during which the department may observe the performance of the probationary employee before Civil Service status is acquired by the employee.

11.2 LENGTH OF PROBATIONARY PERIOD. The period of probation is equivalent to the time period specified in the collective bargaining agreement of full-time service following regular appointment from an eligibility list and commencing on the first day of work performed in the department. Minor absences due to vacations, annual military leave, illnesses, etc., do not interrupt the probationary period unless the absence is so excessive that the Secretary approves a departmental request for an extension of the probationary period.

11.3 INTERRUPTION OF PROBATIONARY PERIOD BY MILITARY SERVICE. A probationer who engages in active military service on an extended basis interrupts the probationary period. The employee may continue the probationary period following return from military leave.

11.4 SERVICE IN ANOTHER CLASS. Service in a class or office other than the one to which an eligible is regularly appointed may be credited toward completion of a probationary period if the Secretary has approved the written statement of the Appointing Authority that the probationary period may be properly judged on the basis of service in the other class or office.

11.5 REMOVAL OF PROBATIONER.

11.5.1 WITHOUT CAUSE. The Appointing Authority may discharge any probationer with or without cause. The reasons for discharge will not be reviewed by the Commission.

11.5.2 PROCEDURE. The Appointing Authority will notify the Commission of the removal of the probationer. Notice must be mailed to or personally served on the employee, and proof of notice must be filed with the Secretary.

11.5.3 RIGHTS RETAINED. A promotional probationer, unless discharged for cause, retains all civil service rights to the position from which appointed.

12. TRANSFER--REDUCTION.

12.1 TRANSFER.

12.1.1 The transfer of an employee does not constitute a promotion in the service, and is not subject to Commission review.

12.1.2 An Appointing Authority may transfer an employee from one position to another position in the same class and department without prior approval.

12.1.3 These Rules have no authority or effect on positions or departments not subject to the Civil Service. Transfer to or from positions or departments not subject to the Civil Service are unaffected by these rules.

12.2 REDUCTION.

12.2.1 12.2.1 AUTHORIZED. As defined in Rule 4.24, a reduction is the movement of an employee from a higher class to a lower class of employment for reasons other than cause.

12.2.2 APPLICABLE CLASSES. A reduction may be approved for:

- (a) Any lower class in which the employee has acquired previously regular standing, if there has been no intervening forfeiture; or
- (b) Employees seeking a reassignment to a vacant position in another permissible class or department for which the employee qualifies.

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12.2.3 PROCEDURE.

- (a) The reduction must be approved by the Appointing Authority and reported to the Commission.
- (b) The reduction takes effect on the date specified by the Appointing Authority.

12.2.4 EFFECT OF REDUCTION.

- (a) Upon the effective date, or following satisfactory completion of any trial period, the reduction will be complete and the employee will have Regular Standing in the lower class to which he/she has been reduced.
- (b) A reduced employee may return to his/her former position only by examination and regular appointment or appointment from a reinstatement list.

12.2.5 REDUCTION AVAILABLE.

- (a) By Employee. A voluntary reduction may be sought by an employee for any vacant position in a class under Rule 13.2.

(b) By Department.

(1) Employees With Standing. Involuntary reduction from a higher Civil Service class to a lower Civil Service class is governed by Rule 13, "Layoff

13. LAYOFF.

13.1 Whenever an Appointing Authority contemplates a reduction in staff because of changes in duties in the organization, a reorganization of positions, the abolishment of a position or service, a lack of work, or a shortage of funds, notice shall be sent to the Secretary who shall work with the Appointing Authority in determining the most advisable procedure for accomplishing the reduction. The rules governing layoffs are covered in the respective bargaining agreement.

13.2 REDUCTION IN LIEU OF LAYOFF. At the time of any layoff, a regular employee may be provided an opportunity by the Appointing Authority to accept reduction to the next lower class in the department. An employee so reduced is entitled to credit for any previous regular service in the lower class.

14. LEAVES OF ABSENCE.

14.1 RETURN FROM LEAVE. At the expiration of a leave of absence authorized by the Port's Employee Guidelines and with the approval of the Appointing Authority, a regular employee resumes the same class of work with standing as determined by these Rules.

15. RESIGNATION.

15.1 HOW SUBMITTED. Resignation of any employee from the Service must be made in writing and filed with the Secretary after approval by the Appointing Authority.

15.2 INVOLUNTARY RESIGNATION. Any resignation may be voided and set aside and the employee reinstated or restored to active duty by order of the Commission upon its determination that the resignation was made involuntarily or under duress or coercion. Such determination may be made only after an employee's appeal and hearing under Rule 18. The Commission will conduct a hearing only after the resigned employee files a written petition with the Secretary within ten (10) calendar days from the effective date of the resignation. If no such petition is filed within the ten (10)-day limit, a resignation is conclusively presumed to have been made voluntarily and without duress or coercion.

15.3 IMPLIED RESIGNATION. The Appointing Authority may presume that any employee has impliedly resigned when the employee has been absent from duty without leave or authorization or has failed to report for duty following the expiration or termination of any suspension for five (5) or more consecutive days or has quit or "orally resigned" and has been absent from duty for three (3) or more consecutive working days without leave or authorization resignation order does not

take effect if, prior thereto, the employee reports for active duty, applies for restoration or reinstatement, or otherwise notifies the Appointing Authority and such notice in the judgment of the Commission rebuts the presumption of resignation.

16. DISCIPLINE AND DISCHARGE.

16.1 SUSPENSION.

- 16.1.1 The Appointing Authority may suspend for cause a subordinate, with or without pay, for a period not to exceed thirty (30) working days. Any suspension under this subsection does not include paid administrative leave pending an investigation or disciplinary decision.
- 16.1.2 A suspension with pay or a suspension without pay for less than five (5) working days shall not be subject to Commission review.
- 16.1.3 Any deprivation by the Appointing Authority of any vacation or other paid leave or compensatory time-off is deemed to be a suspension without pay and is subject to the above provisions.
- 16.1.4 Movement of an employee within the Port's pay plan shall not be considered a suspension or demotion. Employee appeals of movement within the pay plan shall be subject to the respective Collective Bargaining Agreement.

16.2 DEMOTION--DISCHARGE.

- 16.2.1 The Appointing Authority may discharge an employee or demote an employee to a lower class for cause. An employee so demoted loses all rights to the higher class. If the employee does not have standing in the lower class, demotion may not displace any regular employee or probationer.
- 16.2.2 The Secretary must be satisfied that the demoted employee is able to perform the duties of the lower class. The demoted employee may be required to serve a trial period in the class to which demoted, for such time and upon such terms and conditions as the head of the department provides in the demotion order, solely to determine whether the employee is capable of satisfactorily performing the functions and duties of such class.
- 16.2.3 Upon the satisfactory completion of the prescribed trial period or upon the effective date of the demotion if no such period is required, the demoted employee will have the status, rank and standing of the lower class to which demoted, and such class and department will

be deemed to be his/her regular class and department for purposes of these Rules until an authorized change is made.

- 16.3 DISCIPLINE--CAUSE. Cause is defined as a fair and honest reason for discipline, including suspension, demotion or discharge, exercised in good faith by the Appointing Authority and based upon facts that (a) are supported by substantial evidence; (b) are reasonably believed by the Appointing Authority to be true; and (c) are not for any arbitrary or capricious or illegal reason. The following illustrate adequate causes for discipline, but do not constitute an exhaustive list. The Appointing Authority may discipline for any other cause.
- 16.3.1 Incompetency, inefficiency, inattention to, or dereliction of duty;
 - 16.3.2 Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any other act or omission tending to injure the public service, or any other willful failure on the part of the employee to properly conduct himself/herself;
 - 16.3.3 Mental or physical unfitness for the position that the employee holds;
 - 16.3.4 Dishonest, disgraceful, or prejudicial conduct;
 - 16.3.5 Drunkenness or use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation when the use thereof interferes with the efficiency or mental or physical fitness of the employee or that precludes the employee from properly performing the function and duties of any position under the Civil Service;¹
 - 16.3.6 Conviction of a felony or conviction of a misdemeanor involving moral turpitude;
 - 16.3.7 False or fraudulent statements or fraudulent conduct by an applicant, examinee, eligible, or employee, or such actions by others with his/her collusion;
 - 16.3.8 Willful or intentional violation of any lawful and reasonable regulation, order or direction made or given by a superior officer;
 - 16.3.9 Willful or intentional violation of any of the provisions of these Rules; or
 - 16.3.10 Any other cause, act or failure to act that, under law or these Rules, or in the judgment of the Commission, is grounds for or warrants

¹ Employees are subject to the Port's Employee Guidelines and its Drug and Alcohol Policy as well as to state and federal laws governing alcohol and drug use.

dismissal, discharge, removal or separation from the Service, demotion, suspension, forfeiture of Service credit, deprivation of privileges or other disciplinary action.

17. PREDISCIPLINARY HEARING.

17.1 PREDISCIPLINARY HEARING--REQUIRED. The Appointing Authority must provide and arrange for a predisciplinary hearing before demoting or discharging a subordinate.

17.2 PREDISCIPLINARY HEARING--STANDARDS/NOTICE OF DISCIPLINE.

17.2.1 An employee shall be provided with a written notice of the charge and a summary explanation of the department's evidence. The employee shall be given an opportunity to respond to the charges, orally or in writing, and explain why the department's proposed action should not be taken.

17.2.2 The employee may have legal counsel present at a predisciplinary hearing.

17.2.3 The department's explanation of the department's evidence at the predisciplinary hearing must sufficiently apprise the employee of the basis for the proposed action. This Rule, however, may not be construed to limit the employer at any subsequent hearing from presenting a more detailed and complete case, including presenting witnesses and documents that were not available at the predisciplinary hearing.

17.2.4 Should the Appointing Authority determine to demote or discharge the employee after the predisciplinary procedure, it must give written notice to the employee. The notice must include the charges against the employee and a general statement of the evidence supporting the charges.

17.2.5 The Commission may not consider, on appeal, any basis for disciplinary action not previously presented to the employee.

18. HEARINGS.

18.1 HEARINGS--APPEALS.

18.1.1 Any regular employee who is demoted or terminated may appeal such action to the Commission.

18.1.2 Except as otherwise provided in these Rules or by applicable law, any regular employee who is adversely affected by an alleged

violation of the Civil Service Rules may appeal such violation to the Commission.

- 18.2 APPEALS--TIME--FORM. A notice of appeal must be filed with the Secretary within ten (10) calendar days of the action that is the subject of the appeal. The notice of appeal must be in writing and include the mailing address and street address where service of process and other papers may be made upon the appellant. The notice of appeal must also briefly describe the facts giving rise to the appeal and concisely state the reason for the appeal. Forms provided by the Commission may be used for such notice but are not required.
- 18.3 EXHAUSTION OF ADMINISTRATIVE REMEDIES.
- 18.3.1 An employee shall exhaust available administrative procedures before appeal to the Commission.
- 18.3.2 If the employee exhausts the available administrative procedures and continues to believe that cause has not been shown, the employee must within ten (10) calendar days after the final administrative step of the procedure request that the Secretary return the appeal to the Commission for hearing.
- 18.4 AUTHORITY OF STAFF. The Commission's attorney has the authority to make orders on preliminary matters, including motions for discovery and to compel discovery, continuance, and protective orders. Such orders may be appealed to the Commission. The Commission's attorney may also conduct prehearing and settlement conferences (to encourage resolution of contested matters), issue subpoenas, and note depositions.
- 18.5 APPEALS--INITIAL REVIEW. The Secretary reviews all appeals to determine whether the employee has timely filed an appeal and whether the action appealed is a final action. Upon determining that the appeal is not timely, the Secretary issues a written order of dismissal with prejudice, setting forth the basis of the dismissal. In the case of an action that is not final, the appeal must be stayed until such action becomes final. Such orders may be appealed to the Commission.
- 18.6 APPEALS--NOTICE OF HEARING. Upon receipt of a notice of appeal, the Commission staff forwards a copy of the notice to other affected parties. As soon as practicable thereafter, a hearing before the Commission is set, with each party to be afforded not fewer than twenty (20) calendar days' notice of such hearing. All parties may agree to waive the notice provisions and time limits provided by this Rule.
- 18.7 APPEALS--AUTHORITY OF DEPARTMENT. The exercise of jurisdiction by the Commission over a matter does not preclude the party from withdrawing, modifying or otherwise compromising the matter before the matter goes to hearing. Upon resolution of a matter before hearing, any party may request the dismissal of

the matter. A stipulation signed by both parties should be submitted to the Commission before such dismissal.

18.8 SERVICE OF PROCESS--PAPERS.

18.8.1 The Commission staff may cause to be served all orders, notices, and other papers issued by the Commission, together with any other papers that the Commission is required by these rules to serve. Every other paper must be served by the party filing the notice, document or paper.

18.8.2 All notices, documents or papers served by either the Commission or a party must be served upon all counsel of record at the time of such filing and upon parties not represented by counsel. Papers may be served in person, by listed or certified mail, or by regular mail with written acknowledgment of such mailing attached to the papers. Written acknowledgment must be by affidavit of the person who mailed the papers or by certificate of any attorney or the Secretary.

18.8.3 Service upon parties is complete upon personal delivery or upon properly stamped and addressed deposit in the mail system (U.S. or intra-Port).

18.8.4 Papers required to be filed with the Commission are deemed filed upon actual receipt of the papers by the Commission staff at the Commission office. All papers except the original appeal notice must be served with the original and three (3) copies. Briefs and memoranda must be filed with the Commission at least three (3) business days before any hearing involving matters discussed in the brief or memoranda. Documentary evidence is not required to be filed but, may be presented at the hearing.

18.8.5 An appellant or petitioner must notify the Commission in writing of any change in his/her mailing or street address and telephone number. Failure to so notify the Commission constitutes a waiver of service and notice under these Rules.

18.9 DISCOVERY.

18.9.1 Parties to a proceeding must provide each other reasonable access and discovery to all relevant information concerning the matter before the Commission subject to rules of privilege. Any questions concerning relevancy or access are resolved by order of the Commission's attorney.

18.9.2 Upon the failure of any party to comply with an order of the Commission's attorney compelling discovery, the Secretary will

schedule the matter before the Commission for review and determination of appropriate sanctions.

18.10 SUBPOENAS.

- 18.10.1 Every subpoena must identify the Commission and the title of the proceedings, if any, and command the person to whom it is directed to attend, at a specified time and place, and give testimony or produce designated books, documents, or things under that person's control.
- 18.10.2 Upon application of any party or his/her representative, the Secretary will issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The party requesting the subpoena is responsible for having the subpoena properly served. Requests for subpoenas must be submitted to the Commission offices at least three (3) business days before the hearing.
- 18.10.3 Service is made by serving a copy of the subpoena on the person named therein.
- 18.10.4 The person serving the subpoena must make proof of service by filing the subpoena at the Commission office, and if such service has not been acknowledged by the witness, the person serving the subpoena must make an affidavit of service. Failure to file proof of service does not affect the validity of service.
- 18.10.5 Upon a motion promptly made by a party or by the person to whom the subpoena is directed, and upon notice to the party on whose behalf the subpoena was issued, the Commission may:
- (a) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or
 - (b) Condition denial of a motion to quash or modify upon just and reasonable conditions.

- 18.11 **BURDEN OF PROOF.** At any hearing on appeal from a demotion or termination, the Appointing Authority bears the burden of showing that its action was in good faith for cause. At any other hearing, the petitioner or appellant bears the burden of proof by a preponderance of the evidence. The decision of the Appointing Authority is entitled to substantial weight, and will not be set aside unless found by the Commission to be (a) unsupported by substantial evidence; (b) not in good faith; or (c) arbitrary, capricious or illegal.

18.12 EVIDENCE.

- 18.12.1 Subject to other provisions of these rules, all competent and relevant evidence is admissible. In passing upon the admissibility of evidence, the Commission may consider, but is not bound to follow, the rules of evidence governing civil proceedings in the superior courts of the state of Washington.
- 18.12.2 A witness in any hearing may be examined orally under oath or affirmation and is subject to cross-examination by opposing parties and the Commission.
- 18.12.3 When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The Commission may exclude inadmissible evidence and may order cumulative evidence discontinued in its discretion, either with or without objection. A party objecting to the introduction or exclusion of evidence must state the grounds of such objection at the time such evidence is offered or excluded. No such objection is deemed waived by further participation in the hearing.
- 18.12.4 At any hearing before the Commission when documentary exhibits are to be offered into evidence, copies must be furnished to the opposing party, to each Commission member and to the Secretary.
- 18.12.5 Parties are encouraged to stipulate to the admissibility of documentary exhibits. To further this end, parties will request such stipulation no later than three (3) business days before the hearing, barring unusual circumstances. The party to whom the request is made must respond no later than one (1) day before the hearing.
- 18.12.6 An employee has the right to appear before the Commission with or without counsel and to be heard in the employee's defense.

18.13 SUMMARY PROCEEDINGS.

- 18.13.1 **AUTHORIZED.** The Commission will hear appeals from suspensions of five (5) working days or more in a summary manner. The Commission may provide for other or similar procedures in any appeal of a suspension, demotion or discharge in order to efficiently manage the appeal.
- 18.13.2 **PROCEDURE.** Pursuant to a schedule to be established by the Secretary in consultation with the Commission's attorney, the parties shall
- (a) submit the testimony of witnesses in summary statements;

- (b) compile and submit any exhibits;
- (c) file five (5) copies of witness statements and exhibits to the Secretary, and serve the other party; and
- (d) file five (5) copies of objections to any of the testimony and exhibits, and a list of rebuttal witnesses including a summary of rebuttal testimony, with the Secretary, and serve the other party.

Testimony and exhibits to which no objection is taken will be admitted by the Commission without further proof made or permitted. Time for opening statements will be limited. Only direct evidence objected to or identified in rebuttal, and such redirect examination as permitted by the Commission, will be heard, all subject to cross examination.

18.13.3 **RESERVED RIGHTS.** The procedures in this Rule 18.12 shall not limit or restrict the Commission in its management of individual cases coming before it.

18.14 **DELIBERATION.** The Commission may deliberate in closed (executive) session when considering a disciplinary or other quasi-judicial case. Only the Secretary and legal counsel to the Commission may be present during deliberation. No one may convey any information or opinion to the Commission concerning any matter on appeal, other than in open hearing.

18.15 **DECISION.** In any appeal, the Commission must issue a decision, including findings of fact, conclusions of law, and an order, to each party or counsel of record for each party.

18.16 **REMEDIES.** The Commission may issue such remedial orders as it deems appropriate.

18.17 **RECONSIDERATION.** A party may move for reconsideration by the Commission only on the basis of fraud, mistake, or the misconception of facts. Such motion must be filed with the Commission within ten (10) calendar days of the Commissioner's decision. Such motion for reconsideration is decided on affidavits, absent special showing that testimony is necessary.

18.18 **WAIVER.** Upon stipulation of all parties to a proceeding, and upon a showing that the purposes of the rules or resolutions of the Port would be better served, the Commission may waive the requirements of any of these Rules.

18.19 **ELECTION OF REMEDIES.** When any employee has, and exercises, any right to grievance proceedings under any collective bargaining agreement, the Commission shall not hear or consider the same grievance or an appeal involving the same facts subject to the grievance. In the event that an employee has currently pending a

hearing or appeal before the Commission and has filed, or files, a grievance under any collective bargaining agreement involving the same grievance or facts subject to the grievance, the Commission shall abstain from and stay further consideration of the matter on hearing or appeal until the employee makes an election of remedies. In the event that an employee elects to proceed before the Commission, the Commission shall require proof (in a form reasonably acceptable to it) from the employee that the employee has dismissed his or her grievance and waived his or her right to further grievance proceedings involving the same grievance or set of facts subject to the grievance before lifting the stay on any further proceedings before the Commission. In the event the employee elects not to proceed before the Commission, the hearing or appeal shall be dismissed with prejudice.

19. RETIREMENT.

19.1 RETIREMENT. Employees of the Port who are members of pension fund systems as provided by law will be retired on account of service or disability in accordance with the pertinent provisions of law.

20. MISCELLANEOUS.

20.1 REPEALS AND SAVINGS. All matters are subject to these rules, except as provided by the Resolutions of the Port.

20.2 NOTICE. The date of notice for the purpose of these Rules is the date upon which notice of an action is (a) posted in the Commission's office at Port Offices, (b) mailed, or (c) delivered personally to a party to a proceeding.