

Public Employment Relations Commission

Annual Report **2017**



WASHINGTON STATE
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

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Message from the Director

When I took the helm as director in December 2011, the Public Employment Relations Commission (PERC) was already viewed as a credible labor relations mediation and adjudication entity. Still, upon my arrival, my questions were: what do we do, why do we do it, why do we do it this way, and what can we do better?

Together, we identified a number of challenges and found ways to streamline and speed up our processes. One of the biggest challenges facing us was an aging and limited technology system that required redundant processes. Among the things we decided to improve upon was to lessen the length of time for the Commission to issue decisions, which was an average of 358 days from the close of the record in 2011.

Working closely with the Commission, we identified practices that could be changed, like allowing for summary decisions in appropriate situations. Efficiencies such as this helped drive down the time it took to issue Commission decisions and eliminate case backlog.

In 2013, we established new performance targets. Our initial goal was to bring down the time it took to issue all decisions. By 2014, we had met and exceeded my expectations. In our current strategic plan, we aim to issue 100 percent of Commission decisions within 90 days of the close of the record, similar to all other PERC adjudicative decisions.

In 2015, we replaced our outdated case management system with a more flexible technology. The new system eliminated redundancies, provided more automation, supported a paperless business environment, and helped staff speed up many of our processes.

We remain committed to ensuring that public employees and employers receive the highest quality, unbiased, and professional dispute resolution services available. Because we receive funding through legislative appropriations, we do not charge for our services and can remain a neutral third-party in dispute resolution. Helping employers and employees work through disputes contributes to a fair and respectful workplace.

This is PERC's first annual report since 2008, and includes data since 2012. I am proud of the work we do every day to make sure services in the public sector are delivered without interruption.



Mike Sellars
Executive Director



I. Overview

The Public Employment Relations Commission (PERC) is an independent state agency created to help resolve public-sector labor relations disputes. PERC has jurisdiction over public-sector labor relations and collective bargaining in the state of Washington and administers 10 different collective bargaining laws covering nearly 350,000 employees.

PERC does not investigate or prosecute unfair labor practice claims, nor does it adjudicate duty of fair representation claims.

Vision:
Leaders and partners in improving public sector labor-management relations.

MISSION

To prevent or minimize the disruption to public services through the impartial, timely, and expert resolution of labor-management disputes.

VALUES

Innovation • Excellence • Credibility • Neutrality • Integrity • Balance • Respect

PERC has jurisdiction over collective bargaining for public employers statewide, including:

Cities	Public Transit Systems
Counties	State Ferry System
Police Departments	Ports
Fire Districts	Home Care Providers
State of Washington	Family Child Care Providers
State Community Colleges	Adult Family Home Providers
State Universities	Language Access Providers
K-12 (Teachers and Classified)	Symphony Musicians



THE COMMISSION

A three-person citizen commission appointed by the governor adopts rules and decides appeals. These part-time commissioners each serve a five-year term. The Commission appoints the Executive Director who is responsible for the daily operation of the agency.



**Chairperson Marilyn
Glenn Sayan**

brings a wealth of knowledge and experience to the

Commission,

including over 30 years in personnel and labor management. Sayan retired from Washington State as the Department of Personnel director in 1993 after serving as the department's deputy and labor relations manager. She was also the appeals program manager for the state's Higher Education Personnel Board. From 1999 to 2006, she served on the executive board of the Association of Labor Relations Agencies and was president from 2006 to 2007. She is also a mediator and active community volunteer. She has a JD from the University of Puget Sound, School of Law and a BA from The Evergreen State College. Originally appointed in February 1996 as Chair, she is serving her fifth term. Her current term expires in 2021.

Mark E. Brennan has over 35 years' labor relations experience as both a neutral and an advocate. He worked with the National Labor Relations Board in Seattle from 1978 to 1983. From 1983 to 2010, he represented private and public sector labor unions and employee benefit funds. Since 2010, he has acted as a mediator and arbitrator. He is on the Federal Mediation and Conciliation Service and American Association of Arbitrators arbitration panels and has been on the PERC Dispute Resolution Panel. In 2011, he was appointed by Governor Chris Gregoire to the Marine Employees Commission until its sunset in 2013. He was appointed to the Commission by Governor Jay Inslee in 2013. Brennan has a BA from the University of Washington and a JD from the Gonzaga University School of Law. His current term expires in 2018.



Mark R. Busto

assisted management for over 30 years in

establishing and administering human resources

policies and programs. He represented employers before judges, juries, administrative agencies, and arbitrators between 1983 and 2015. He is an active volunteer and previously served as a member and chair of the King County Personnel Board (1992–96) and Secretary/Treasurer of the Labor and Employment Law Section of the Washington State Bar Association (2000–04). Busto currently serves on the National Board of Directors of American Rivers. He has a BA from Occidental College and a JD from the University of Southern California Law Center. Prior to obtaining his law degree, he was an employee relations consultant to the State of California. His term expires in 2019.



EXECUTIVE DIRECTOR

In addition to being responsible for the day-to-day operations of the agency, the Executive Director determines bargaining unit configurations and certifies bargaining unit representatives. The Executive director also engages in outreach and training, mediation, and adjudication.

Executive Director Mike Sellars was appointed in December 2011 and has over 20 years of public-sector labor and employment law experience. He serves on the executive board of the Association of Labor Relations Agencies. He has a BA from Boise State University and a JD from Seattle University School of Law.

PERC has **1 executive director** and **29 professional staff**.

PROFESSIONAL STAFF

Led by the Executive Director, PERC has only 30 employees, so it's critical that each individual has the capacity, resources, and support to do their job. PERC staff is committed to resolving disputes in a manner that prevents or minimizes disruption of public services.

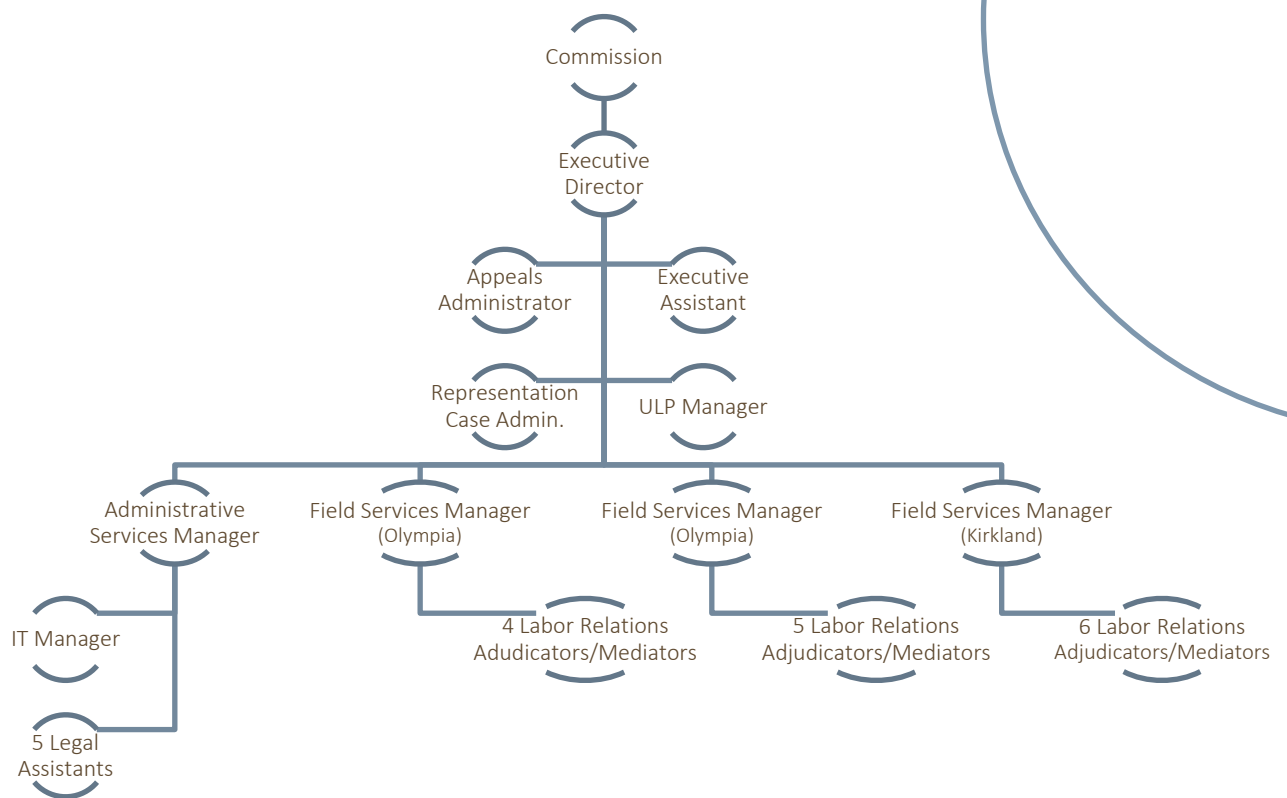
Labor relations professionals provide high-quality, timely dispute resolution services. Labor Relations Adjudicators/Mediators are classified state employees cross-trained to conduct both mediations and adjudications. About a third of PERC's adjudicators/mediators have retired over the past five years. As a result, recruitment and training are

key workforce strategies to help maintain highly skilled adjudicators/mediators.

Of the 21 adjudicators/mediators in the agency, three manage field staff and 15 work in the field, travelling to the parties to mediate and adjudicate disputes as well as engage in dispute prevention. The final three adjudicators/mediators work in specialist positions: one oversees representation matters and conducts representation elections or card checks, another manages the intake process for unfair labor practice complaints, and the third assists the Commission with its work on appeals.

Eight additional staff members provide technical and administrative support.

ORGANIZATIONAL STRUCTURE



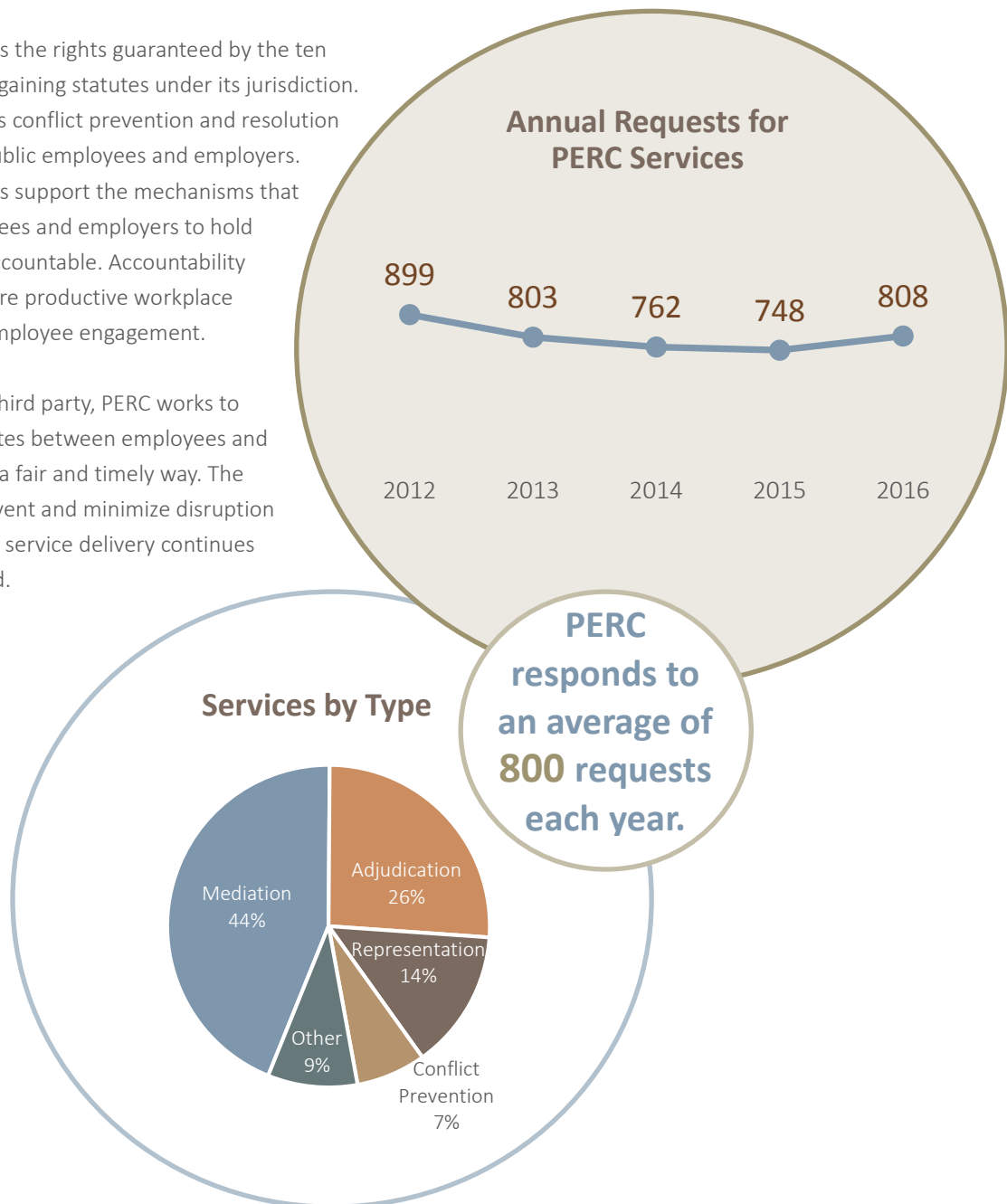
Our services are provided all over the state, wherever the parties are located.

Employee and salary information is available in the State Employee Salaries database (<http://fiscal.wa.gov/Salaries.aspx>).

II. Strategic Service Delivery

PERC oversees the rights guaranteed by the ten collective bargaining statutes under its jurisdiction. PERC provides conflict prevention and resolution services to public employees and employers. These services support the mechanisms that allow employees and employers to hold each other accountable. Accountability leads to a more productive workplace and higher employee engagement.

As a neutral third party, PERC works to resolve disputes between employees and employers in a fair and timely way. The goal is to prevent and minimize disruption so that public service delivery continues uninterrupted.



PERC professional services include:

Mediation

- Grievances
- Collective Bargaining Agreements
- Unfair Labor Practice Complaints

Adjudication

- Unfair Labor Practice Complaints
- Grievance Arbitrations
- Bargaining Unit Configurations

Representation

- Elections
- Bargaining Unit Clarifications

Conflict Prevention

- Training
- Outreach
- Facilitation
- Online Resources

Other

- Dispute Resolution Panel Requests

PERC maintains a list of qualified private arbitrators and provides a select panel to parties upon request.

- Certification of Issues to Interest Arbitration

For employees under certain statutes, PERC certifies any issues remaining in dispute following mediation.

AVERAGE REQUESTS FOR SERVICES ANNUALLY

2012–16

352

Mediation

- 12% Grievances
- 24% Collective Bargaining Agreements
- 8% Unfair Labor Practice Complaints

212

Adjudication

- 24% Unfair Labor Practice Complaints
- 2% Grievance Arbitrations
- <1% Declaratory Order, Fact Finding & Non-Association

110

Representation

- 9% Elections
- 5% Unit Clarifications

55

Conflict Prevention

- 7%

75

Other

- 9%

MEDIATION

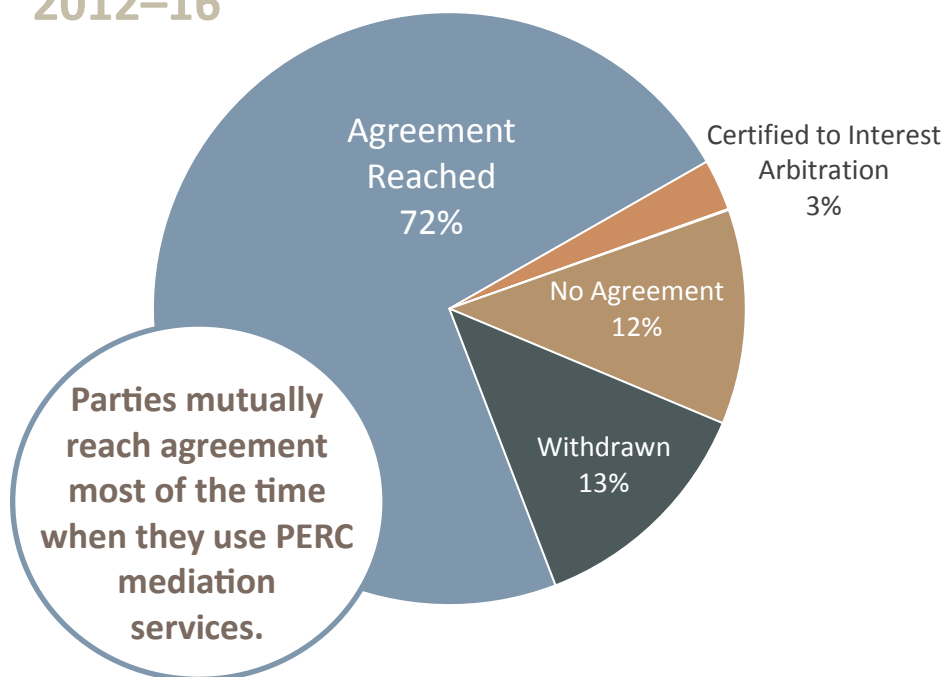
In mediation, an impartial mediator helps those in conflict define issues, explore solutions, and reach mutual agreement. Mediation is voluntary and the parties are in control of any agreements that result. Mediation seeks to prevent conflicts from escalating and the goal is mutual acceptability.

PERC conducts three types of mediation:

- **Collective Bargaining Agreements:** When a public employer and a union don't agree on the terms of a collective bargaining agreement, PERC provides mediation to help the parties reach an agreement.
- **Grievances:** When a public employer and a union have a dispute over the interpretation or application of a collective bargaining agreement, PERC offers mediation to help the parties reach an agreement.
- **Unfair Labor Practice Complaints:** PERC offers parties involved in unfair labor practice complaints the opportunity to participate in mediation.

Mediation is an effective way to resolve disputes because it saves money and both parties control the decision.

MEDIATION OUTCOMES 2012–16



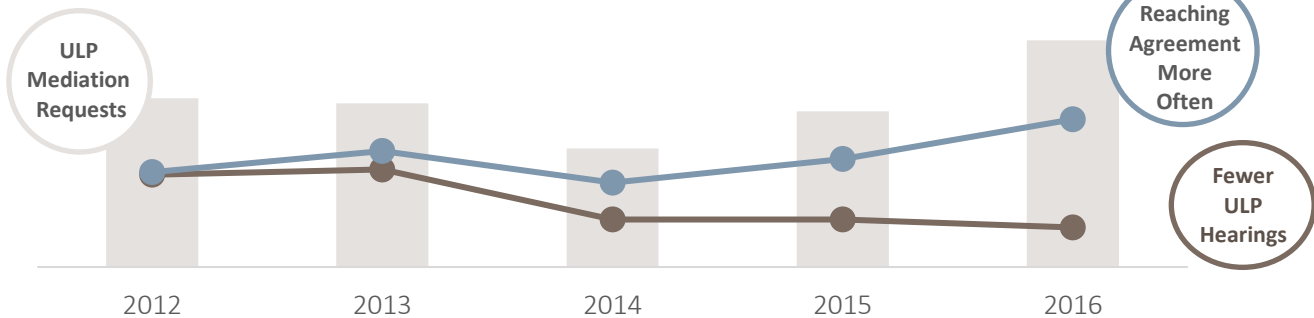
ADJUDICATION

Less Cases Going to Hearing

Over 90 percent of the adjudication cases filed each year are unfair labor practice (ULP) complaints. Since 2012, about 200 unfair labor practice complaints have been filed annually, but the number of those cases going forward to hearing have decreased by nearly 50 percent. More cases are being resolved through PERC mediation.

Unfair Labor Practice Mediations result in the parties reaching agreement over 70 percent of the time.

Fewer Hearings as a Result of More Agreements Reached in ULP Mediations



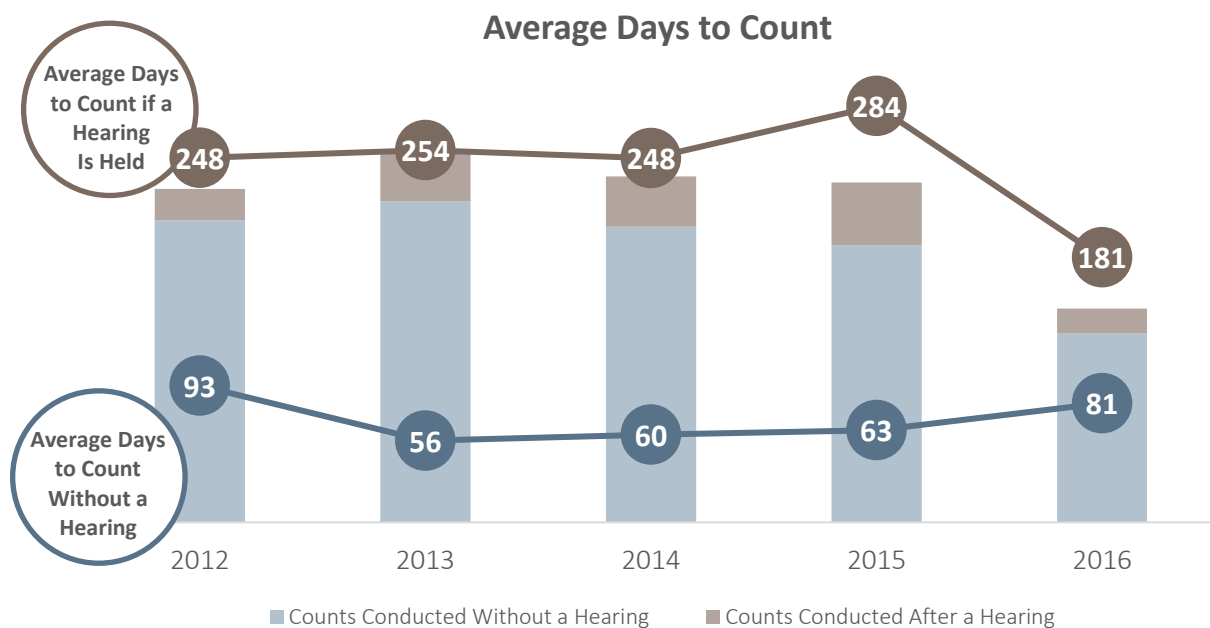
Appeal of Adjudicative Decisions

Adjudicative decisions issued by PERC Labor Relations Adjudicators/Mediators may be appealed to the Commission, and the Commission's decisions may be appealed to court.

The frequency of adjudicative decisions being appealed to court and the percentage upheld on appeal are indicators of the soundness and quality of PERC decisions. Over the last 15 years, about 20 percent of the commission's decisions have been appealed to court. Since 2012, 79 percent of appealed decisions are unchanged following appeal to court.

REPRESENTATION

A cornerstone of the state's collective bargaining laws is the right of employees to decide whether to be represented for purposes of collective bargaining. It is a priority for PERC that a representation petition be processed quickly so that employees get to exercise that right. A count is conducted about 10 weeks after a petition is filed. When there are issues requiring adjudication first, a count is conducted about 6-10 months after the petition is filed. Reducing these timelines is an agency goal.



In the last five years, PERC's largest count involved about 1,300 employees and the smallest included only two.

CONFLICT PREVENTION

PERC has increased its efforts to help employers and employees prevent disputes, and clientele has responded positively. The annual volume of requests for conflict prevention services—including training, outreach, and facilitation—has more than doubled since 2012.

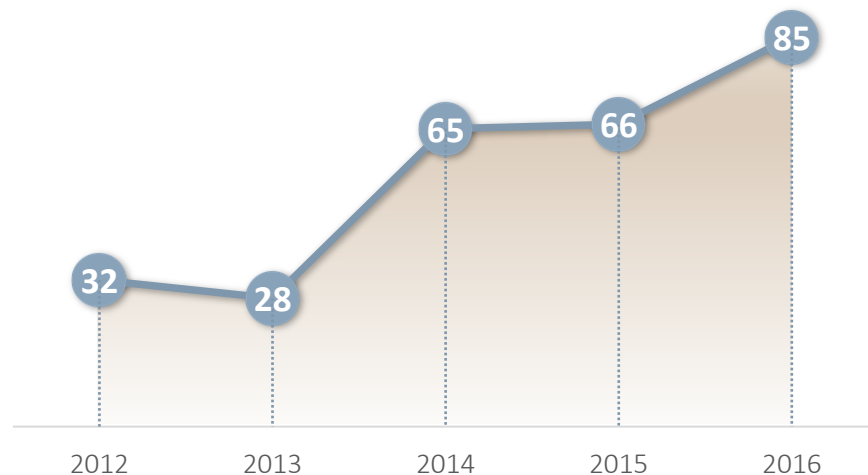
PERC staff travels statewide to provide training to public employers and unions, either separately or jointly, to help

- Improve labor-management relationships.
- Expand knowledge of collective bargaining laws and processes.
- Learn and apply the Interest-Based Bargaining process.
- Learn and apply other collaborative bargaining techniques.

All requests for conflict prevention services can be made online at perc.wa.gov/training. Introductory training will soon be offered online and on-demand. PERC also provides custom training upon request.

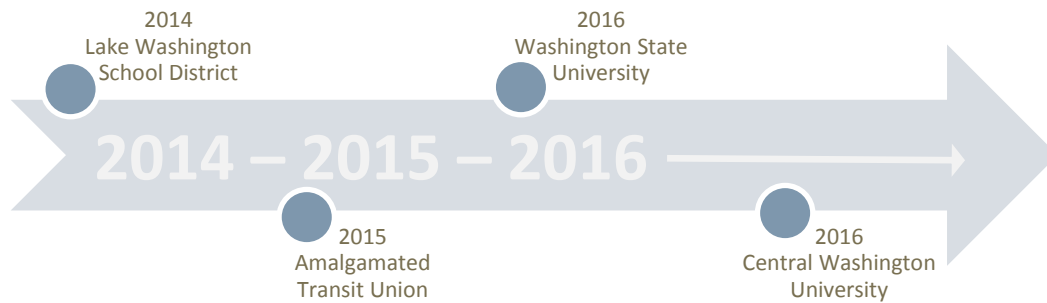
The most **cost-effective** way to resolve a dispute is to avoid one.

Conflict Prevention Training Requests Continue to Increase



Downloadable
and **on-demand**
training will be
available in 2017 on
the PERC website.

RECENT KEY DECISIONS



Lake Washington School District, Decision 11913-A (PECB, 2014)

The statute of limitations to file an unfair labor practice complaint is six months from the illegal conduct. The start of the six-month statute of limitations, or triggering event, occurs when a potential complainant has actual or constructive notice of the complained-of action.

However, in a skimming case where a party alleges that bargaining unit work was removed from the bargaining unit without bargaining first, the work must actually be removed from the bargaining unit in order for a skimming violation to occur. Until that point, a cause of action for skimming cannot exist.

The statute of limitations in a skimming case cannot begin to run until the work is assigned to non-bargaining unit employees.



Amalgamated Transit Union, Local 1384 v. Kitsap Transit, 187 Wn. App. 113 (2015)

In a case where the Commission found an employer committed an unfair labor practice when it unilaterally eliminated a health plan, the Court of Appeals reaffirmed the Commission has the authority to restore the situation, as nearly as possible, to that which would have occurred before the unfair labor practice.

In this instance, the Court found that making the employees whole by reinstating a health plan with substantially similar benefit levels as the discontinued plan and paying the affected employees any premium savings from the date the plan was discontinued until the date an equivalent plan was made available was not punitive.

***Washington State University, Decision 12385-A (PSRA, 2016)***

Representing employees at a branch campus of a university, a union negotiated a collective bargaining agreement with the university. The agreement contained a provision that it would apply to all employees in bargaining units in which the union has been certified as the exclusive representative during the term of the agreement.

The union then became the exclusive representative of a separate bargaining unit of employees at the university's main campus.

The employer applied the terms of the bargaining agreement based upon that provision in the agreement which, in this instance, resulted in the loss of a pay step.

The union filed an unfair labor practice complaint. The Commission held that the union should not be allowed to waive the statutory rights of employees it does not represent.

The employees never had the opportunity to bargain following the selection of the union as the exclusive representative. The employer's application of the collective bargaining agreement to the new bargaining unit without those employees having the opportunity to bargain was an unfair labor practice.

***Central Washington University, Decision 12305-A (PSRA, 2016)***

In a case involving the question of whether the employer contracted out bargaining unit work without bargaining, the Commission examined and revised its current standard for contracting out work.

That standard first involved determining whether the contracted out work was work historically performed by bargaining unit employees. If it was, the Commission then looked at five factors to determine whether a duty to bargain existed.

In its review, the Commission found that standard to be confusing, repetitive, and inconsistently applied. The Commission revised the standard with the goal of being clearer.

Now, if the work at issue has historically been performed by bargaining unit employees, the Commission will apply the balancing test already used to determine whether topics are mandatory subjects of bargaining.

That test balances the competing interests of the employees in wages, hours, and working conditions against the extent to which the subject lies at the core of the employer's managerial control.

STRIKE HISTORY

PERC monitors strike activity by public employees as part of its mission to minimize the disruption to public services. PERC's role when public employees strike is to mediate with the parties to facilitate a resolution and a resumption of work.

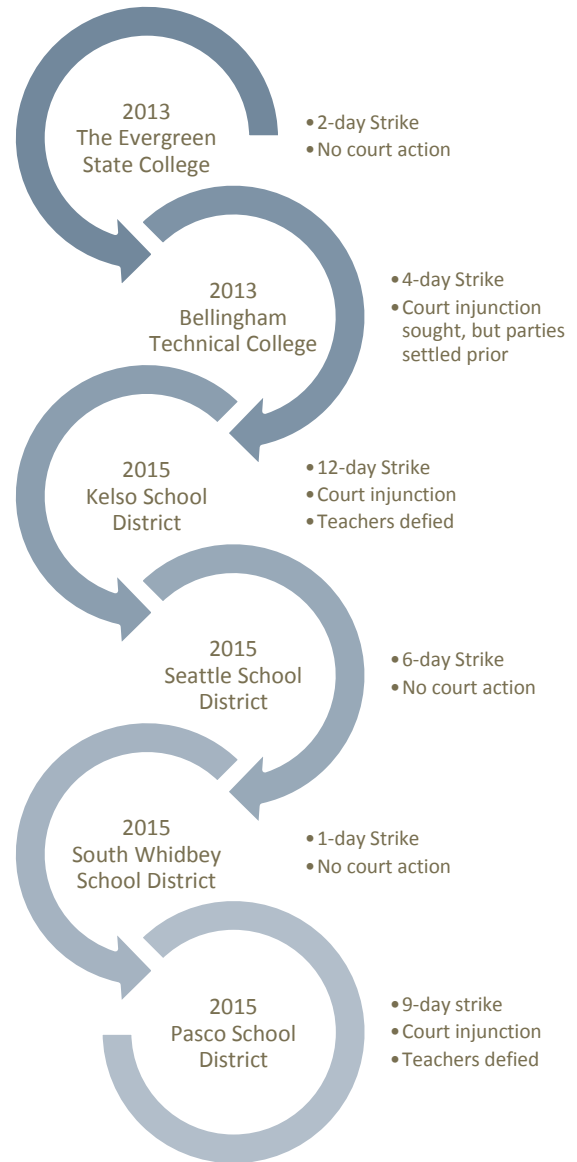
A few of the statutes administered by PERC contain language prohibiting strikes or lockouts. The bulk of the strikes have been by teachers in the K-12 system.

Since 2012, there have been six strikes, four by K-12 school teachers, one by employees at a four-year college (The Evergreen State College), and one by employees at a technical college (Bellingham Technical College).

Employers involved in three of the six strikes did not go to court. Employers in the remaining three did seek a court order to stop the strike. In one of these three, the parties reached an agreement before the court ruled on the request, and in the other two, the court issued an order enjoining the strike. The employees involved in those two strikes initially defied the court order, but the parties reached agreement prior to a contempt hearing.

PERC mediated all of these disputes and helped the parties reach an agreement and resume public services.

STRIKE TIMELINE



III. Major Achievements

Over the past five years, PERC has been able to deliver better, more timely services, largely as a result of major technology enhancements and improved internal processes. PERC's major achievements include: offering new election options, launching a new website, replacing the case management system, and reducing case backlog.


ONLINE AND TELEPHONIC ELECTIONS

Employees in a bargaining unit participate in a vote to join a union if a petition (filed on behalf of the employees by a union) has enough support to result in an election. PERC historically conducts elections by mail, but in December 2013, a petition involving 1,300 employees—a larger number than is typical—led PERC to propose an online election. The parties agreed, and PERC held the first online election in September 2014, administered by an outside vendor.

Both online and telephonic voting options were offered during this first election. The turnout for the election was comparable to elections involving similarly situated employees. The vote involved 1,305 eligible medical residents or medical fellows at the University of Washington. Of the 1,305 eligible voters, 53 percent voted. Of those, 92 percent voted online and 8 percent voted telephonically.

Using this method saved approximately 19 hours of staff time (based on hours required to prepare ballot materials for mailing and hours to tally ballots), and the overall cost was comparable. Electronic voting allowed 29 percent of voters to get their vote in on time, which otherwise would have been late using a mail ballot election. The enhanced ability of eligible employees to exercise their right to choose whether to be represented directly advances the purpose of the statutes PERC administers.

In 2016, PERC adopted new rules to allow for electronic voting and is now pleased to offer telephonic and online election service options.



**PERC is the first state
labor relations agency
to offer online and
telephonic elections.**

MORE AND BETTER ONLINE SERVICE OPTIONS

1 PERC revised its website.

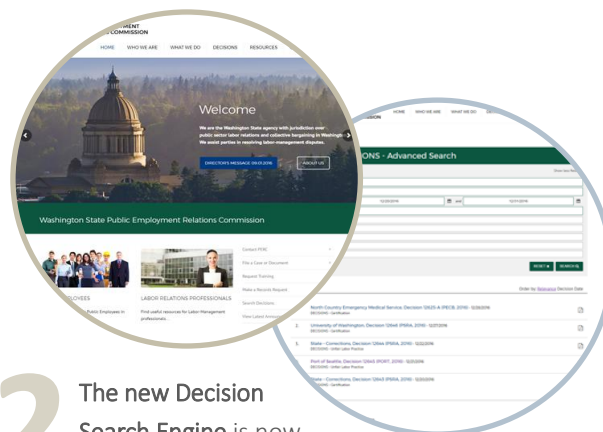
Launched in October 2015, the new website is built on a platform that makes it easier for staff to make changes without having to rely on IT resources. The old site was dense and not user-friendly, but new and updated content is now more useful and understandable.

Since the overhaul of the website, the number of people visiting the site has stayed relatively constant. However, the number of page views has more than tripled, and visitors are staying three and half times longer.

	2014	2016
Visits to Site	11,780	11,258
Unique Visitors	4,991	5,061
Page views	15,414	51,754
Pages/Session	1.31	4.48
Duration of Visit	1:38	5:20
Bounce Rate*	78.65%	38.59%

*left after viewing one page

PERC began tracking website data in 2014.



2 The new Decision Search Engine is now

available on the website. The new search engine, powered by Decisia, is a free service that allows customers to search all PERC decisions in one database.

Decisions are full-text searchable and contain headers with additional information. Where available, links to the signed PDFs are provided.

This tool is more robust than any decision search engine PERC has ever offered and includes the ability to see whether a decision has been appealed, to the Commission or the courts, and the result.

Time to post decisions to the website reduced by 20 minutes per decision

IMPROVED CASE MANAGEMENT

On the Executive Director's first day on the job, PERC's 15-year-old case management system went down, and though staff brought it back, investigating alternative technology solutions became a top priority.

In preparation for putting a new system in place, staff began evaluating existing business processes that had been limited by the old system. The old system limped along while this work was underway until the system's server crashed, jeopardizing 40 years of data. PERC was forced to find a decommissioned 15-year-old server, buy parts, and revive the old system until a long-term solution could quickly be found.

Constrained by time and budget (\$100,000), the search revealed only one company—Salesforce—that could meet budget and deadline expectations. After evaluating the Salesforce demo and discussing existing business processes with the vendor-hosted solution, PERC was ready to move forward.

PERC went live with the new case management system on June 30, 2015—initial implementation took only five weeks. Staff learned the tool quickly and worked with the vendor to make system enhancements. As the tool develops, improvements continue to be made and staff builds proficiency. Today, PERC power users have figured out better, more innovative ways to pull data, create forms, and use the information.

**Printing reduced
by 2,400 pages
per month and
postage reduced
by \$160 per
month.**

The new system reflects a paperless, electronic business model and offers more possibilities for efficiency in the future. The technology provides quick and easy ways to access data, even on a mobile device. Though some business process changes have been limited by PERC's existing rules, PERC has been working to change rules to streamline processes and continues to gain efficiencies.

BENEFITS OF MOVING TO SALESFORCE

- ✓ Available on mobile devices.
- ✓ Delivers autonomy and power to business owners. Programmers no longer needed to pull data.
- ✓ Supports paperless, electronic business model, including the potential for e-filing, automated forms, and letters.
- ✓ Secures historical data, which now is backed up in the cloud.
- ✓ Integrates with current applications.
- ✓ Built in functionality allows for future improvements.
- ✓ Hosted and supported by vendor.

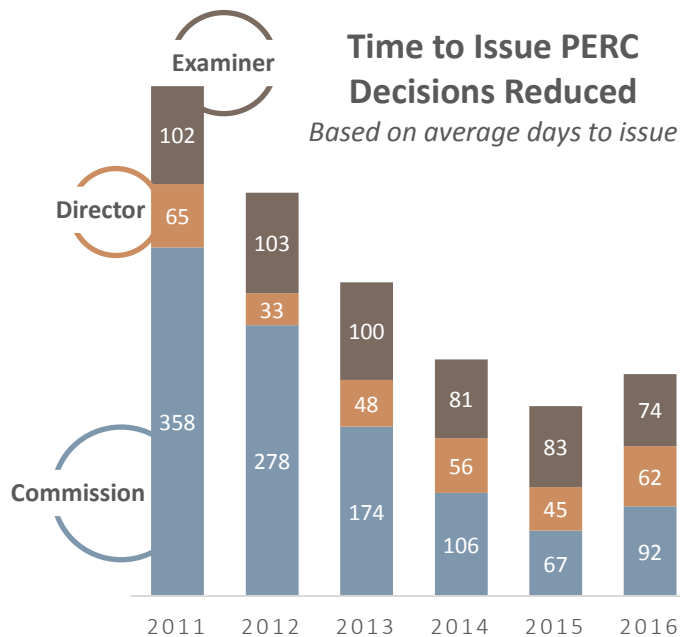
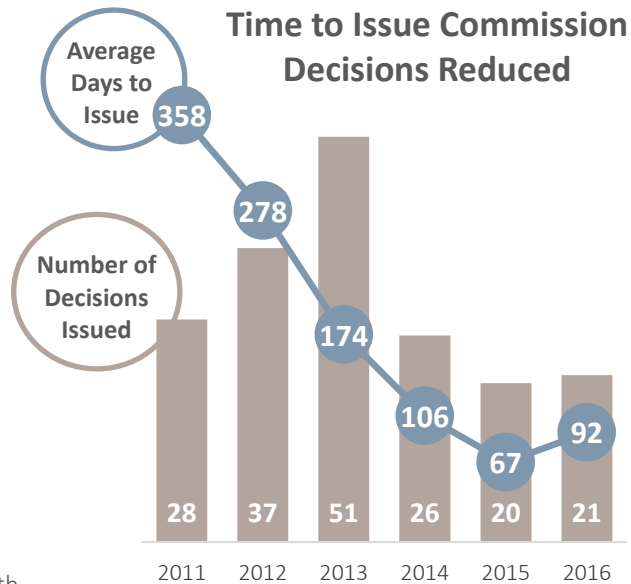
ELIMINATED COMMISSION BACKLOG

In 2011, the Commission was operating with a backlog of 30 cases. This backlog slowed decision time and limited efficiency. After evaluating potential ways to speed the process, two key strategies were introduced:

1 Full Decision vs. Summary

In 2012, the Commission reviewed its process to issue decisions.

Prior to this review, the Commission had been issuing full decisions on every examiner or executive director decision appealed to it. The Commission began issuing summary decisions for cases where it agreed with the underlying decision and did not need to clarify further. This change sped up the number of cases the Commission was able to process while still completing a thorough analysis of each case record and devoting more attention to cases that presented complex issues and required longer decisions.



2 New Performance Expectations

During 2012-13, turnaround time on decisions became an agency organizational goal. Expectations were embedded in individual employee performance plans, including employees working with the Commission.

Although caseloads fluctuate from month to month, the time to issue decisions has declined steadily since 2011. In September 2016, PERC celebrated achieving the goal of having zero cases backlogged at the Commission level.

IV. Looking Forward

Over the past five years, PERC has made major service delivery improvements. Decisions are being issued faster, and more and better information is available online. Training is available on-demand to help employers and employees prevent conflicts before they happen, and the technology used to manage PERC's information is more secure, robust, and efficient.

PERC will continue to set goals that require the agency to grow and adapt. Moving forward, we will:

- Continue to examine and refine processes that help expeditiously process cases and serve clientele.
- Expand dispute prevention services, developing new content that helps public entities work with their constituencies in the bargaining process.
- Make conflict prevention services available online and on demand.
- Add functionality to the decision search engine.
- Reduce the time to process petitions so that public employees can exercise their right to determine whether to be represented more quickly.
- Continue to assess needs of clientele with feedback from the Clientele Consultation Committee and other outreach opportunities.
- Continue to be an international leader in the field of employment relations.

Find more about our performance goals and how we're achieving them in our online **Strategic Plan Progress Report**.

perc.wa.gov/strategic-plan-2017-2019

Contact Information

LOCATION

PERC has offices in Kirkland and Olympia. Mediation and adjudication is conducted all over the state, wherever the parties are located.

Olympia Office

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