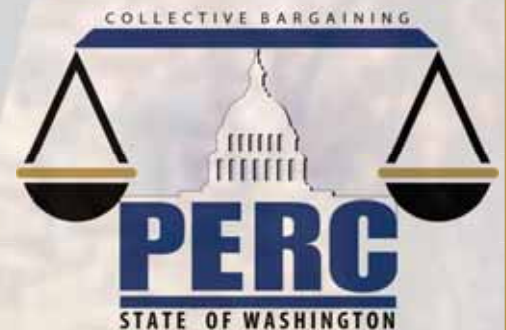


STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PRACTITIONER GUIDE



VERSION 2

PUBLIC EMPLOYMENT RELATIONS COMMISSION



*Providing: “uniform and impartial
... efficient and expert” resolution of
labor-management disputes*

PRACTITIONER GUIDE

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This booklet is intended for individual employees, union representatives, and employer officials who process cases before the Public Employment Relations Commission (PERC). It does not cover all possible situations, and the applicable statute and rules always control in the event of any conflict with this booklet.

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Frequently Asked Questions (Table of Contents)

1.	What are collective bargaining rights?	1
2.	What kinds of disputes do state laws resolve?	2
3.	Who has collective bargaining rights under state laws?	3
4.	What is PERC?	4
5.	Can I get a thumbnail overview of PERC processes (rules)?	5
6.	What forms does PERC use (and where can I get them)?	7
7.	Does the PERC staff represent or advocate for parties?	8
8.	How does someone prepare for a PERC hearing?	8
9.	What happens at the start of a PERC hearing?	11
10.	How is evidence presented at a PERC hearing?	13
11.	What happens after a PERC hearing?	16
12.	How does someone research past PERC decisions?	17
13.	How do PERC staff and panel members issue their decisions?	18
14.	How does someone appeal to the Commission?	19
15.	What terms are used and how are they defined (glossary)?	21

PUBLIC EMPLOYMENT RELATIONS COMMISSION

PRACTITIONER GUIDE

1. what are collective bargaining rights?

State laws give most state and local government employees in Washington a right to band together to negotiate their wages, hours and working conditions with their employers. Those laws also set up procedures to resolve collective bargaining disputes between those employees and employers.

Employee rights under the laws of the State of Washington include:

- ♦ A right to form, join or assist employee organizations (unions);
- ♦ A right to bargain through an organization chosen by a majority of the employees in an appropriate group of classifications or positions (bargaining unit);
- ♦ A right to refuse to pay union dues or fees unless the employer and the union chosen by a majority of the employees in the bargaining unit agree to a “union security” provision;
- ♦ A right of nonassociation allowing employees with religious beliefs against union membership to make alternative payments instead of paying union dues.



Certain types of conduct are prohibited by state laws and PERC rules are designed to protect employees in the free exercise of their rights. It is unlawful:

- ♦ For an employer or union to threaten public employees with reprisals (loss of jobs or benefits) or force (physical violence), or to promise benefit (bribes), to influence employees in the exercise of their collective bargaining rights under state law;
- ♦ For an employer to set up or show a preference for a particular union, or to involve itself in the internal affairs of any union;
- ♦ For an employer to discharge or otherwise discriminate against employees (or for a union to ask an employer to discriminate in reprisal for filing charges or giving testimony), or to encourage or discourage exercise of collective bargaining rights under state law;
- ♦ For an employer to deal directly with employees in a bargaining unit that has chosen an organization as its exclusive bargaining representative;
- ♦ For an employer or union to fail or refuse to bargain, or to act in bad faith, in collective bargaining concerning the wages, hours or working conditions of bargaining unit employees;
- ♦ For an employer or union to implement any changes of employee wages, hours or working conditions, unless there has been notice and bargaining.

All public employers, all public employees, and all organizations representing public employees must comply with the law. The remedy for unlawful conduct is to put the injured party back in the situation that existed before the unlawful conduct, and can include reinstatement and back pay for employees who lose their jobs. Attorney fees and other extraordinary remedies can be ordered in some circumstances.

Washington state laws do not expressly grant any public employees the right to strike, and some state laws expressly prohibit strikes by public employees. This is different from the rights of private sector employees who have a right to strike under federal laws.

2. what disputes do state laws resolve?

There are four broad types of labor-management disputes, depending on the type of issue:

Establishing and Modifying Bargaining Relationships

When public employees seek to organize or change unions, PERC groups employees into “bargaining units” according to their communities of interest and holds a secret-ballot election (or uses a card-check procedure in some circumstances) to determine if a majority of the employees in a bargaining unit support a particular union (“E” cases).

When changes of circumstances occur, PERC holds hearings and makes decisions to modify existing bargaining units (“C” cases).

Protecting the Rights of Parties and the Collective Bargaining Process

When public employees, unions, or public employers claim that another party has committed an “unfair labor practice” in violation of state law, PERC holds hearings, makes decisions enforcing state laws, and orders remedies for any violation of state law (“U” cases).

When a public employee and a union disagree about the employee’s right to religious-based nonassociation under state law, PERC holds hearings and makes decisions on whether the employee is eligible for nonassociation and who is to receive the money the employee pays instead of paying union dues (“N” cases).

Impasses in Contract Negotiations

When public employers and unions are unable to agree on a written contract establishing the wages, hours and working conditions of bargaining unit employees, PERC provides mediation to help the parties reach an agreement (“M” cases).

When public employers and unions representing state employees or school district certificated employees fail to reach agreement in mediation, they can receive non-binding recommendations from an impartial Fact-Finder in a special procedure administered by PERC (“F” cases).

When public employers and unions representing certain types of employees fail to reach agreement in mediation, state law authorizes an impartial arbitrator to impose a contract in a special interest arbitration procedure administered by PERC (“I” cases).

Violations of Collective Bargaining Agreements

When public employers and unions representing their employees negotiate and sign a written collective bargaining agreement, they typically include (and are even required to include for state employees) a “grievance procedure” to resolve claims that the written contract has been violated. Rather than have day-to-day workplace disputes go to the courts, grievance procedures typically provide (and are even required to provide for state employees) for final and binding resolution of grievance disputes by impartial arbitrators.

When a union and employer who are unable to agree on the interpretation or application of their contract want to negotiate the matter, PERC provides mediation services for grievance disputes on request (“G” cases).

When a union and employer who disagree on the interpretation or application of their contract want a binding decision on the matter, PERC assigns a staff member (“A” cases) or refers arbitrators from its Dispute Resolution Panel (“P” cases).

3. who has collective bargaining rights (state laws)?

The state laws administered by PERC are contained in several chapters of the Revised Code of Washington (RCW). Chapter 41.58 RCW establishes PERC and contains some provisions that apply to all employers and unions under the state laws administered by PERC. Use the following table to find the state law that applies to you:

Employer Type	Employee Type	Applicable Statute(s)
Community colleges	Classified employees	Chapter 41.80 RCW
	Faculty	Chapter 28B.52 RCW
Courts (at superior court, district court and municipal court levels only)	All employees	Chapter 41.56 RCW
Higher education (four-year) institutions	Faculty	Chapter 41.76 RCW
	Classified employees	Chapter 41.80 RCW
	Printing crafts (UW only)	Chapter 41.56 RCW
	Teaching Assistants, Research Assistants, etc. (UW only)	Chapter 41.56 RCW
	Exempt employees	Chapter 41.56 RCW
Local government (including cemetery districts, cities, counties, dispatch centers, educational service districts, Energy Northwest, fire districts, health districts, hospital districts, irrigation districts, library districts, sewer districts, transit systems, and water districts)	All employees	Chapter 41.56 RCW
Port districts	All employees	Chapters 41.56 and 53.18 RCW
Public utility districts	All employees	Chapters 41.56 and 54.04 RCW
School districts	Certificated employees	Chapter 41.59 RCW
	Classified employees	Chapter 41.56 RCW
State general government agencies	Classified employees	Chapter 41.80 RCW
State adult home care (Chapter 70.128 RCW)	Adult family home providers	Chapter 41.56 RCW
State child care (Chapter 74.15 RCW)	Child care providers	Chapter 41.56 RCW
State home care (Chapter 74.39A RCW)	Individual providers	Chapter 41.56 RCW
Technical colleges	Classified employees	Chapter 41.56 RCW
	Faculty	Chapter 28B.52 RCW
Washington State Patrol	Troopers	Chapter 41.56 RCW
Private sector employers	All employees	Chapter 49.08 RCW (for mediation and arbitration only)

In addition, the state Administrative Procedure Act (APA), Chapter 34.05 RCW, governs adjudicative proceedings, including the “C”, “D”, “E”, “N”, and “U” cases processed by PERC.

All of these state laws are available on the PERC website, www.perc.wa.gov, or by calling PERC’s Olympia office at (360) 570-7300.

4. what is perc?

PERC is an agency of the State of Washington which has been in operation since 1976. PERC has resolved more than 21,000 labor-management disputes.

Three **Commission members** are appointed by the Governor and confirmed by the Senate, based on being “knowledgeable in the field of labor-management relations” in the state. They serve on a part-time basis. They adopt rules and policies, and they decide appeals from decisions issued by staff members. To assure their independence, they are appointed for fixed terms, and can only be removed from office only for neglect or malfeasance.

The **Executive Director** is the full-time agency head and issues decisions on some types of disputes. To assure independence, the Executive Director is appointed by the Commission.

PERC **Labor Relations Adjudicator/Mediators** are cross-trained to process all types of cases, and work throughout the state. To assure independence, they are covered by the State Civil Service Law.

Field Services Managers supervise teams of staff members and balance case assignments to promote timely case processing.

An **Operations Manager** and an **Unfair Labor Practice Manager** handle the initial processing of cases, and perform administrative tasks.

PERC’s MISSION

is to administer state

collective bargaining laws

in a manner that is ...

Uniform - applying the same standards to all employers, employees, and unions, unless a state law specifically establishes a different standard for the particular situation;

Impartial - deciding all labor-management disputes fairly and without favor or preference for any employee, employer or union;

Efficient - resolving labor-management disputes in a manner that is both timely for the parties and cost-effective for the benefit of the general public; and

Expert - applying a high level of knowledge, skill and training in a very specialized field.

PERC acts in the public interest by helping to maintain labor peace in the State of Washington. When it created PERC, the Legislature stated its intent to “ensure the public of quality public services” in Chapter 41.58 RCW. The procedures impartially administered by PERC provide logical and orderly resolution to many labor-management disputes.

The PERC website, www.perc.wa.gov, contains copies of the state laws and rules, PERC forms, case processing flow descriptions, and other materials that may be helpful.

5. thumbnail overview of perc case processing (rules)



PERC docket a number of different case types, depending on the nature of the dispute presented:

A Cases (Grievance Arbitration by PERC Staff under Chapter 391-65 WAC) - A PERC staff member (Arbitrator) holds a hearing to receive evidence and arguments on a grievance dispute. The Arbitrator issues a written decision which is final and binding on the parties. Arbitration decisions cannot be appealed to the Commission.

C Cases (Unit Clarification under Chapter 391-35 WAC) - A PERC staff member (Hearing Officer) holds a hearing to receive evidence and arguments on a proposed bargaining unit modification. The Executive Director (or the Hearing Officer, under authority delegated in some cases) issues a written decision. Any party can appeal. The Commission considers the evidence received by the Hearing Officer, and issues a written decision which affirms, modifies or reverses the staff decision.

D Cases (Declaratory Orders under WAC 391-08-520) - These cases can only be processed with the consent of all parties to be bound by a decision. If all parties consent, the petition and any responses are forwarded to the Commission, which issues a written decision.

E Cases (Representation Cases under Chapter 391-25 WAC) - PERC's Representation Coordinator obtains a list of employees from the employer, verifies that the petition is supported by at least 30% of the employees

involved, and reviews potential issues with all parties (usually in a telephone conference call). If there are disputed issues, a PERC staff member (Hearing Officer) holds a hearing to receive evidence and arguments, and the Executive Director (or the Hearing Officer, under authority delegated in some cases) issues a written decision. The PERC staff conducts a secret ballot election (usually by mail ballot) or cross-check (under limited circumstances), and issues a tally of the result. Any party can file objections (appeal) after the tally is issued. The Commission considers the documents and evidence received by the Hearing Officer, and issues a written decision which affirms, modifies or reverses the staff decision.

F Cases (Fact-Finding under Chapter 391-55 WAC) - This process is available for school district certificated employees (Chapter 41.59 RCW) and state civil service employees (Chapter 41.80 RCW), if the employer and union do not reach an agreement in mediation about a contract. An impartial person (Fact-Finder) selected from PERC's Dispute Resolution Panel or assigned from the PERC staff holds a hearing to receive evidence and arguments, and issues (non-binding) written recommendations on what the terms of a new contract should be. Fact-Finding recommendations cannot be appealed to the Commission.

G Cases (Grievance Mediation under Chapter 391-55 WAC) - A PERC staff member (Mediator) meets with the employer and union about a

grievance dispute. Mediators help the parties to reach an agreement, but do not have a power of compulsion. If the parties do not reach an agreement, the grievance must be advanced to arbitration (an "A" or "P" case). The Mediator does not issue a decision, and there are no appeals to the Commission.

I Cases (Interest Arbitration under Chapter 391-55 WAC) - This process is available for fire fighters, paramedics, nuclear security guards, public transit workers, individual providers of home care, some county corrections personnel, some fire dispatchers, and some law enforcement officers, if the employer and union do not reach agreement in mediation about a contract. The PERC mediator can recommend that the unresolved issues be submitted to interest arbitration. An impartial person (Neutral Chairperson) selected from PERC's Dispute Resolution Panel or assigned from the PERC staff holds a hearing to receive evidence and arguments, and issues a (final and binding) written decision establishing the terms of a new contract. Interest arbitration decisions cannot be appealed to the Commission.

M Cases (Mediation under Chapter 391-55 WAC) - A PERC staff member (Mediator) meets with an employer and union about the terms of a new collective bargaining agreement. Mediators help the parties to reach an agreement, but do not have a power of compulsion. The Mediator does not issue a decision, and there are no appeals to the Commission.

N **Cases (Nonassociation under Chapter 391-95 WAC)** - If an employer and union agree to impose “union security” obligations on bargaining unit employees and an employee asserts a religious-based right of nonassociation under state law, the employee and the union are expected to communicate with one another before either of them files a case with PERC. The PERC staff reviews incoming petitions (usually within 30 days after a case is filed). **If a petition is defective:**

- ♦ PERC mails a deficiency notice to all parties, giving a deadline to cure the defect; and
- ♦ PERC dismisses the case if the defect is not cured.

If a petition appears to be in good order or defects have been cured:

- ♦ PERC mails a preliminary ruling letter to all parties, listing the issues to be resolved;
- ♦ A PERC staff member (Examiner) holds a hearing to receive evidence and arguments about the employee’s religious beliefs and about who should receive alternative payments; and
- ♦ The Examiner issues a written decision.

The employee or union can appeal a dismissal or an Examiner’s decision. The Commission considers the documents and the evidence received by the Examiner, and issues a written decision which affirms, modifies or reverses the staff decision.

P **Cases (Grievance Arbitration by Panel Arbitrators under Chapter**

391-65 WAC) - The union and/or employer can request a list of arbitrators from PERC for a grievance dispute, and PERC mails a list of arbitrators selected by computer at random from PERC’s Dispute Resolution Panel. The parties select an Arbitrator from that list. The Arbitrator holds a hearing to receive evidence and arguments, and issues a written decision which is final and binding. Arbitration decisions cannot be appealed to the Commission. There is no charge for the list of panel members, but the parties must pay the fees and expenses of the Arbitrator they choose.

S **Cases (Settlement Conferences under Chapter 391-45 WAC)** - Settlement mediation is a non-binding process in which a PERC mediator is assigned to facilitate communication between the parties involved in the unfair labor practice, and to assist the parties reach a mutually acceptable resolution of all or part of their dispute prior to a hearing. The settlement mediator will not be the hearing examiner if a settlement is not reached, and will not discuss the case with the assigned examiner. Parties will be encouraged, on factual and legal grounds including precedence on the particular issue, to resolve the unfair labor practice. Participation is voluntary and a refusal to participate will not prejudice a party in any manner.

T **Cases (Training Requests)** - PERC provides training services in multiple forms:

- ♦ As speakers for meetings planned by

agency clientele groups;

- ♦ Training to labor and management parties on Interest-Based Bargaining, Labor-Management Cooperation and other topics related to collective bargaining; and
- ♦ Sponsoring public conferences.

U **Cases (Unfair Labor Practices under Chapter 391-45 WAC)** - The PERC staff reviews incoming complaints (usually within 30 days after a case is filed) applying an “assuming all of the facts alleged are true and provable” test. **If a complaint is defective:**

- ♦ PERC mails a deficiency notice to all parties giving a deadline to cure the defect; and
- ♦ PERC dismisses the allegation (or entire complaint) if the defect is not cured.

If an unfair labor practice violation could be found:

- ♦ PERC mails a preliminary ruling letter to all parties, listing the allegations that will be the subject of a hearing and setting a deadline for the respondent to file an answer;
- ♦ A PERC staff member (Examiner) holds a hearing to receive evidence and arguments; and
- ♦ The Examiner issues a written decision.

Any party can appeal a dismissal or an Examiner’s decision to the Commission. The Commission considers the documents and evidence received by the Examiner, and issues a written decision which affirms, modifies or reverses the staff decision.

Chapter 391-08 WAC - Rules of Practice and Procedure applies to all PERC cases. It covers case docketing and numbering, notice of appearance, computation of time, filing and service of papers, continuances, subpoenas, interpreters, citation of decisions, confidentiality of agency records and location of agency offices. Some provisions in **Chapter 10-08 WAC - Model Rules of Procedure** also apply in “C”, “D”, “E”, “N” and “U” cases before PERC.

All of these rules are available on the PERC website, www.perc.wa.gov, or by calling PERC’s Olympia office at (360) 570-7300.

6. PERC forms

PERC forms are designed to obtain the information PERC needs for case processing. Parties filing cases with PERC are strongly encouraged to use these forms



Form A-1 Request for Grievance Arbitration

Used by employers or unions to file “A” and “P” cases, to obtain interpretation or application of a collective bargaining agreement.

(Individual employees cannot file these cases, because the employer and union are the only parties to the collective bargaining agreement being interpreted/applied.)

Form C-1 Petition for Clarification of Bargaining Unit

Used by employers or unions to file “C” cases, to decide the bargaining unit status of classifications/positions after circumstances change.

(Individual employees cannot file these cases, because the employer and union are the only parties to the bargaining relationship being modified.)

Form E-1 Petition for Investigation of Questions Concerning Representation

Used to file “E” cases by:

- ◆ Unions seeking certification as exclusive bargaining representative of employees; or
- ◆ Employers questioning whether a union represents its employees; or
- ◆ Employees seeking “decertification” of their existing union.

Form G-1 Request for Grievance Mediation

Used by employers or unions to file “G” cases, asking for mediation on the interpretation or application of a collective bargaining agreement.

(Individual employees cannot file these cases, because the employer and union are the only parties to the collective bargaining agreement being interpreted/applied.)

Form M-1 Request for Mediation

Used by employers or unions to file “M” cases, asking for mediation to resolve issues arising in negotiations for a collective bargaining agreement.

(Individual employees cannot file these cases, because the employer and union are the only parties to the collective bargaining agreement being negotiated.)

Form N-1 Petition for Ruling on Nonassociation Claim

Used by employees or unions to file “N” cases, where those parties disagree about the religious-based right of nonassociation.

(Employers cannot file these cases, because they have no direct interest in the outcome of the dispute between the union and an individual employee.)

Form U-1 Complaint Charging Unfair Labor Practices

Used to file “U” cases by:

- ◆ Unions claiming an employer has committed an unfair labor practice under state law;
- ◆ Employers claiming a union has committed an unfair labor practice under state law; or
- ◆ Employees claiming an employer or union has committed an “interference,” “domination,” or “discrimination” violation of state law.

(Individual employees cannot file “refusal to bargain” claims, because the duty to bargain only exists between an employer and union.)

All of the above PERC forms can be downloaded and/or printed from the PERC website, www.perc.wa.gov. The PERC forms are also available by telephoning PERC’s Olympia office at (360) 570-7300.

Two additional forms are online under the Training tab of our web page:

- ◆ Request for Speaker
- ◆ Request for Training (Interest Based Bargaining or Labor Management Committee)

7. PERC staff members are impartial

The parties to a dispute must present their own evidence and arguments in all proceedings conducted by PERC staff members or PERC Dispute Resolution Panel members.

PERC staff members always function as mediators or decision-makers (like judges). They cannot recommend strategies or methods to use at a hearing, cannot give legal advice, and cannot recommend any particular attorney, union, or other representative.

The procedures in your case may vary from the procedures outlined in this pamphlet, depending on the circumstances. In particular:

- ◆ Communications between a party and a PERC Mediator in “G”, “M” and “S” cases when the other party is not present (including telephone calls and e-mail) are confidential; and
- ◆ Dispute Resolution Panel members may use procedures in “F”, “I”, and “P” cases that differ from the procedures used by PERC staff members.



8. preparing for a PERC hearing

Continuance (Postponement) - If you want to change arrangements for any conference or hearing scheduled by PERC, or if you want more time to file a paper with PERC, you must contact the other parties to the case BEFORE you contact PERC. See WAC 391-08-180.

- ◆ If all parties agree, the party asking for the change must send a written request to PERC (with copies to all other parties) stating that all parties agree to the continuance.
- ◆ If all parties do not agree, the party asking for the change must send a written request to PERC (with copies to all other parties) giving good cause for the change and stating which of the other parties does not agree. The PERC staff member may hold a conference with all parties (usually by telephone) to hear their arguments and rule on the request.



Discovery - PERC’s rules do not authorize the “discovery” processes used in court. See WAC 391-08-300. Parties can voluntarily exchange evidence and witness lists prior to a PERC hearing.

Docket Records - PERC's computerized case docket records include information on all cases processed by PERC since 1976, and are public record. See WAC 391-08-650. When appropriate, PERC takes "official notice" of its docket records.

- ◆ Parties should use all four parts of the PERC case number in all correspondence concerning the case.
- ◆ PERC mails a "Notice of Case Filing" to all parties, containing the case number and the contact information (addresses, etc.) for all parties and representatives known at that time. The notice will be accompanied by a cover letter and a courtesy copy of the case that was filed. The courtesy copy does not relieve the parties of their responsibilities to properly serve each other under WAC 391-08-120, but should prove helpful.
- ◆ Parties are asked to send any corrections or additions to PERC, in writing.
- ◆ Attorneys or other persons representing parties must file a notice of appearance with PERC (with copies to all other parties), unless they are already listed on the PERC docket record for the particular case. See WAC 391-08-010(2).
- ◆ PERC mails a "Record of Appearance" to all parties when corrected or updated contact information is received. Parties are asked to send any further corrections or additions to PERC, in writing. PERC uses the contact information on its docket records to mail letters, notices and decisions to parties. A computer-generated "Record of Service" is mailed with notices and decisions listing the names/addresses used to mail the paper.



You could forfeit your rights if you fail to keep your contact information current on PERC's docket records, because you might not receive notice of important steps in the procedure.

Exhibits - Bring at least four copies of your exhibits to a PERC hearing (two for PERC, one for yourself, and one for each of the other parties). **DO NOT pre-number your exhibits**, because PERC prefers to number all exhibits in the order they are presented at the hearing. (PERC's procedure avoids the uncertainty that otherwise occurs if a witness refers to "Exhibit 7" when there may be a "Union Exhibit 7" and a "Joint Exhibit 7" and an "Employer Exhibit 7" in evidence.)

Ex parte Communications - Except for mediation ("G", "M" and "S" cases), where conversations between the mediator and one party are an important part of the process, contacts between the parties and PERC staff members are strictly limited to procedural matters. (This is similar to court rules making it improper for one party to talk to the judge when the other party is not present.)

Filing - Except for evidence submitted at a hearing, you must file any papers you want PERC to consider at PERC's Olympia office. Filing is complete only when the papers are actually received by PERC. See WAC 391-08-120. (See "Exhibits" for documents submitted at a hearing.)

Service - On the same day you file any papers with PERC, you must give or send a copy to each of the other parties to your case. The only exceptions are "showing of interest" documents in representation cases and confidential correspondence with a mediator. See WAC 391-08-120. Make and keep a written record of when and how you served the other parties.

Interpreters and Reasonable Accommodations - PERC takes responsibility in some cases, but the parties have this responsibility in other types of cases. See WAC 391-08-315.

- ♦ PERC will provide interpreters for non-English-speaking or impaired parties or witnesses in “C”, “D”, “E”, “N”, and “U” cases, and will also provide reasonable accommodation of facilities or services if requested for a disabled party or witness. These requests must be submitted to PERC **two weeks prior to the hearing**.
- ♦ The parties are responsible for providing interpreters and/or reasonable accommodations needed by themselves or by their witnesses in other types of cases.

Prehearing Conference - PERC staff members may hold conferences (usually by telephone conference call) to discuss procedural matters with all parties. No witnesses are questioned, but the parties may be asked to stipulate (agree) on facts or documents. In “C”, “D”, “E”, “N”, and “U” cases, the PERC staff member will issue a “Statement of Results” listing any actions taken and/or agreements reached, and that statement will be binding unless one or more of the parties files a timely objection. See WAC 10-08-130.



OR



Notice of Hearing - PERC issues a formal notice in “C”, “D”, “E”, “N” and “U” cases, announcing the date, time, and location of a hearing. See WAC 10-08-040.

Witnesses - You need to arrange for your own witnesses before the hearing. You may request (but are not entitled to) pre-hearing interviews with the witnesses that will be called by other parties. To preserve their impartiality, **PERC staff members cannot be called as witnesses**.

Subpoenas - These orders direct witnesses to attend a hearing, and to bring specified materials with them (the Latin term “subpoena” translates roughly as “subject to penalty”). See WAC 391-08-310. You do not need to issue a subpoena to witnesses who are willing to participate in a hearing. If a witness does not volunteer to participate, or needs a subpoena to get time off to attend the hearing, you need to serve a subpoena on the witness prior to the hearing.

- ♦ Attorneys can sign their own subpoenas in “C”, “D”, “E”, “N”, and “U” cases. See RCW 34.05.446(1).
- ♦ PERC staff members can sign subpoenas requested by a party, but you need to make your request **several days before the hearing** to allow time for processing the request.
- ♦ The party that wants the witness to attend must give or send the subpoena to the witness, and must offer

witness fees and expenses in “C”, “D”, “E”, “N”, and “U” cases.

A witness or another party may ask PERC to cancel (quash) or modify a subpoena that is claimed to be unreasonable or oppressive.

Teleconference Hearings - Under limited circumstances (such as witness availability problems), PERC can conduct part of a hearing by telephone. If you want any testimony taken by telephone, you must take the following actions **at least two weeks prior to the hearing**:

- ♦ Notify other parties, and find out if they agree or oppose your request;
- ♦ Notify the PERC staff member of your request, and whether the other parties agree or oppose your request; and
- ♦ All documentary evidence to be used with the telephone witness must be sent to the witness in advance. See RCW 34.05.449(3), WAC 10-08-140(2), and WAC 10-08-180.

If the request is approved, the PERC staff member must issue an amended notice of hearing in “C”, “D”, “E”, “N”, and “U” cases not less than seven days before the hearing, stating that part or all of the hearing will be conducted by telephone. See WAC 10-08-040(1).

Who Can Attend? - Attendance at PERC dispute resolution proceedings varies by case type:

- ♦ Mediation sessions (“G”, “M” and “S” cases) are private, with attendance limited to the mediator(s) and the representatives of the parties;
- ♦ Grievance arbitration hearings (“A” and “P” cases) are private under the “Code of Professional Responsibility for Arbitrators of Labor-Management Disputes” applicable to those cases. Unless the parties agree otherwise, attendance is limited to the arbitrator, the representatives of the parties, and the witnesses they call;
- ♦ Hearings in statutory proceedings (“C”, “D”, “E”, “F”, “I”, “N”, and “U” cases) are open to the public, with the following persons normally present:
 - The PERC staff member or other impartial person (Arbitrator, Examiner, Fact-Finder, or Hearing Officer);
 - A reporter (contracted by PERC for “C”, “D”, “E”, “N”, and “U” cases, but only present in other types of cases if arranged for and paid by the parties);
 - The representatives of the parties;
 - The witnesses called by the parties; and
 - Audience members and representatives of the news media (who must not engage in demonstrations or other activities that disrupt the hearing process).

9. opening of a perc hearing

Use the time before the hearing begins to:

- ♦ Have any last-minute discussion about settling particular issues or the entire dispute;
- ♦ Stipulate (agree on) any facts that are not in dispute;
- ♦ Sign the PERC appearance sheet (so PERC will have the correct spelling of participants’ names for the transcript of the hearing and the decision);
- ♦ Exchange witness lists and discuss problems about availability or sequence of witnesses; and
- ♦ Review the exhibits that will be proposed by all parties, and stipulate (agree on) the authenticity of any exhibits that are not in dispute; Discuss whether some or all witnesses should be excluded from the hearing room (“sequestered”) while other witnesses are testifying. Each party will keep its attorney or representative and one key person in the hearing room even if other witnesses are sequestered. (If the parties disagree, the PERC staff member will make a ruling.)

Time spent on these activities before the start of the hearing tends to cut down on surprises and makes the hearing go smoother.



Going “On the Record” - When the PERC staff member says, **“The hearing will be in order”** all other conversation in the room must stop. PERC staff members also:

- ◆ Announce the case number and their name, so the information can be included in the transcript of the hearing.
- ◆ Explain the role of the reporter (who takes down everything said while the hearing is in session), and instruct those present to ask the PERC staff member, **“Can we go off the record?”** if they want to take a break.
- ◆ Remind the parties to give concise reasons in support of motions or objections.
- ◆ Invite the parties (or their representatives) to state their names for the record, so the information can be included in the transcript of the hearing.
- ◆ Admit stipulated (agreed on) exhibits and other stipulations of fact into the record; and
- ◆ Ask the parties if they have any preliminary motions. *(The PERC staff member will listen to the parties’ arguments, and will grant or deny each motion.)*



Opening Statements - PERC staff members will invite the parties to explain their theories of the case and/or what they intend to prove at the hearing. Opening statements are not evidence!

- ◆ The employer normally goes first in “A” and “P” cases involving discipline or discharge.
- ◆ The union normally goes first in “A” and “P” cases on issues other than discipline/discharge.
- ◆ The petitioning party normally goes first in “C” and “E” cases .
- ◆ The employee normally goes first in “N” cases.
- ◆ The party that filed the complaint normally goes first in “U” cases.

Other parties may make their opening statements at this time, or they may reserve their opening statement until they begin to present their own witnesses.

Burden of Proof - For most issues (and sometimes for entire cases) one of the parties will lose unless it proves its claims or allegations. This burden varies by the type of case:

- ◆ In “A” cases involving discipline or discharge, the employer is in the best position to know why it took the disputed action, and has the burden of proof;
- ◆ In “A” cases involving issues other than discipline/discharge, the union is in the best position to know what theory it is advancing, and has the burden of proof;
- ◆ In “C” and “E” cases, a party proposing exclusion of an employee from all collective bargaining rights has the burden of proof as to the status of that employee;
- ◆ In “N” cases, the employee claiming the right of

nonassociation has the burden of proof;

- ◆ In “U” cases, the party that filed the complaint has the burden of proof;
- ◆ In “U” cases, a respondent advancing an “affirmative” defense (other facts or circumstances that excuse the challenged conduct) has the burden of proof for that defense.

The party that has the burden of proof on an issue goes first with presenting evidence on that issue, and other parties then respond with their own evidence and arguments. If PERC staff members allow adjustments to the order of presentation to accommodate the availability of witnesses, that does not change the burden of proof. Even if other parties present no evidence, a party that fails to meet its burden of proof will lose that issue (or the entire case).

10. presenting evidence at a PERC hearing

Calling and Examining Witnesses - Witnesses are asked to sit where they can be seen and heard by the PERC staff member, by the reporter, and by the representatives of all parties.

- ◆ When it is your turn to call a witness, say, **“I call (name of witness) as a witness.”**
- ◆ Witnesses must promise to tell the truth, and it is a crime (perjury) under Washington state law to lie while testifying. The PERC staff member or the reporter will administer the oath or affirmation.
- ◆ The first question to ask your witness is, **“Please give your name and address.”**
- ◆ Follow up with questions that bring out additional identifying facts (how or why the witness knows something about the dispute to be decided by PERC).
- ◆ Ask additional questions (direct examination) that get your witness to tell what they know about facts within his or her knowledge.

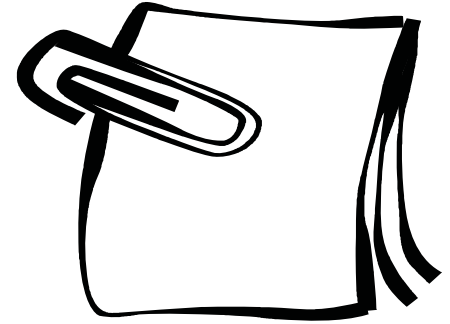
It is difficult to be both a witness and a representative in the same case. If you are going to be a witness, it is better if you arrange for someone else to ask you questions.



Objections - Other parties can interrupt the questioning of a witness with an “objection” if they claim a question asked, or an answer given, is improper.

- ◆ When an objection is made, the witness must stop talking until the PERC staff member makes a ruling on the objection.
- ◆ The objecting party must clearly state a reason for the objection. The usual objections are:
 - ▶ “Redundant” or “Cumulative” or “Asked-and-Answered” all mean that the witness (or other witnesses) have already testified on the subject matter;
 - ▶ “Immaterial” or “Irrelevant” both mean that the answer to the question will have no effect on the outcome of the issue or case;
 - ▶ “Leading” means that a question being asked on direct examination improperly suggests the answer being sought by the party that called the witness;
 - ▶ “Lack of Personal Knowledge” or “Hearsay” mean that the question concerns something that the witness has not personally seen or heard;
 - ▶ “Incompetent” or “Privileged” mean that the evidence should be excluded because of a traditional restriction such as testimony:
 - By a child too young to understand the meaning of an oath;
 - About a conversation with a person who has since died;
 - About a private communication with a mediator;
 - About a conversation between a husband and wife;
 - About a conversation between a lawyer and his/her client;
 - About a conversation between a medical professional and his/her patient; or
 - About a conversation between a person and his/her clergy.

... “The PERC staff member will provide an opportunity for the party questioning the witness to respond to an objection, and will then rule on the objection . . .”



- ▶ “Calls for an Opinion” means that the question asks about a theoretical or hypothetical situation, rather than about facts within the knowledge of the witness. *(An exception to this objection is if the witness has already been shown to be an expert on the subject).*
- ▶ “Calls for a Legal Conclusion” means that the witness is being asked to answer an issue to be decided by the PERC staff member in the case.
- ◆ The PERC staff member will provide an opportunity for the party questioning the witness to respond to an objection, and will then rule on the objection. The questioning of the witness can then either continue or shift in a different direction, as appropriate.
- ◆ The party that called the witness is allowed to ask follow-up questions (re-direct examination) after the other parties finish their cross-examination; and
- ◆ If there is re-direct examination, other parties will be allowed to ask follow-up questions (re-cross-examination) to complete the testimony.

Additional Witnesses - Repeat the same direct / cross / redirect / re-cross process for each additional witness that you want to call in presenting your case.

Exhibits - The parties can have documents and other tangible evidence made part of the record at a hearing. To start this process at a hearing, say: **“Please have this numbered as an exhibit.”**

Note: Petitions, complaints, answers, motions, and other formal papers filed with PERC prior to a hearing are already part of the official record in the case, and do not need to be resubmitted as exhibits at a hearing. Letters, contracts, and other documents filed as attachments to formal papers still need to be admitted in evidence. If you are uncertain about the status of any document, ask the PERC staff member, “Is the (name of document) already part of the record in this case?”

Cross-examination-Regardless of which party calls a witness, other parties always have a right to cross-examine the witness. Leading questions are allowed, and cross-examination is not limited to the scope of the direct examination.

Re-direct examination and Re-cross-examination - One or more additional rounds of questioning are normally allowed for each witness:

- ◆ The PERC staff member or reporter will assign the next exhibit number.
- ◆ The party proposing the exhibit must have at least four copies available at the hearing (two copies for PERC, one copy for its own use, and a copy for each of the other parties), and the other parties will be entitled to see the exhibit before it is shown to a witness.
- ◆ “Laying a foundation” for an exhibit means identifying/authenticating it, as follows:
 - ▶ If all parties agree (stipulate) that the exhibit is authentic (regardless of whether they agree on its value as evidence), that speeds up the process; or
 - ▶ If the parties do not agree, the party proposing the exhibit must ask the witness who is then on the witness stand to identify the exhibit. Other parties will be permitted to ask questions (“voir dire”) about the source of the exhibit before its contents are discussed.

◆ The party that wants the PERC staff member to consider the exhibit in making a decision should say, “**I move for admission of Exhibit (number) in evidence.**” Other parties will have an opportunity to object, and the PERC staff member will make a ruling. The most common grounds for objections are:

- ▶ The source of the exhibit is not sufficiently identified;
- ▶ The exhibit is hearsay; or
- ▶ The exhibit should be excluded as privileged or incompetent.

Once an exhibit is “admitted in evidence” it will speak for itself. Having a witness read the exhibit aloud is unnecessary, and only lengthens the record.

Resting Your Case - When you have finished presenting all of your

witnesses and exhibits (your case-in-chief), say, “**We rest our case.**” or “**I rest my case.**”

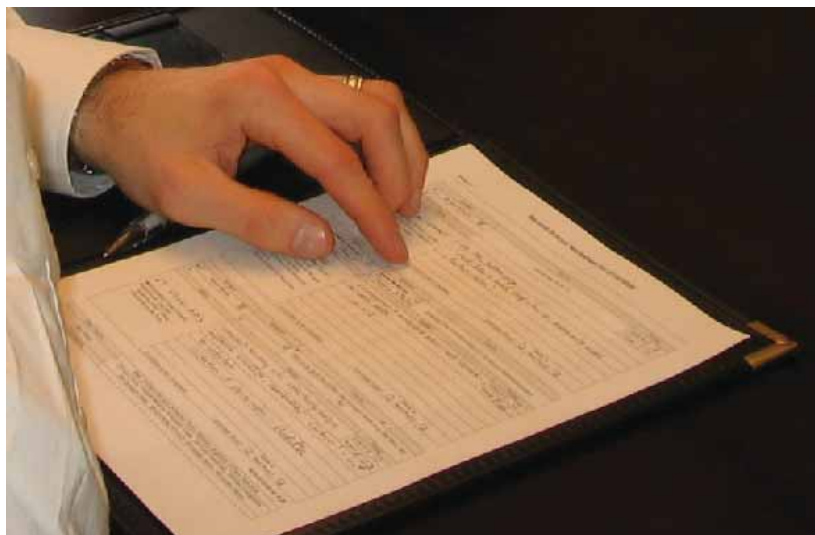
Cross-examining Witnesses Called by Other Parties

After you rest your case, the other party (parties) will have the opportunity to call their own witnesses and present exhibits.

- ◆ The same direct/cross/re-direct/re-cross process will be used, but you will be doing the cross-examination and re-cross-examination.
- ◆ Suggestions for effective cross-examination include:
 - ▶ Take good notes during the direct examination of a witness called by another party;
 - ▶ Ask questions with a definite purpose in mind (and consider the effect on your case if you

ask a question when you do not know what the answer should be);

- ▶ Avoid questions that merely repeat testimony given on direct examination (because repeating testimony adverse to your case merely reinforces that testimony);
- ▶ Use questions to bring out contradictions, improbabilities or defects in the story being told by the witness;
- ▶ You are allowed to ask leading questions (“Isn’t it true that . . .”) in cross-examination.;
- ▶ Use the opportunity to ask questions to establish facts that support your case; and
- ▶ Do not argue with the witness.



Rebuttal - A second round of presentations can occur after the responding party (parties) finishes with its last witness and says, **“We rest our case.”**

- ♦ The party that went first will have an opportunity to call or recall witnesses. When that party is finished with those witnesses, it should say, **“That concludes our rebuttal.”**
- ♦ If the party that went first presents rebuttal evidence, other parties will have an opportunity to call rebuttal witnesses. When finished, it should say, **“That concludes our rebuttal.”**

The presentation of evidence usually ends after four rounds of witnesses (case-in-chief/defense/rebuttal/rebuttal).

Closing Arguments - The PERC staff member will ask the parties for their preferences about due dates for written arguments (see below). PERC does not encourage oral arguments made on-the-record at a hearing, because parties usually benefit from clarity when they take the time to organize and write out their arguments away from the “heat of battle” at a hearing.

Closing the Hearing - The PERC staff member will announce, **“The hearing is closed.”** Any motion to reopen the hearing must be filed with PERC (and served on other parties) before a decision is issued, and reopening will be allowed ONLY if the requesting party shows it has newly-discovered evidence that could not have been presented at the hearing.

11. procedures after a PERC hearing

Transcript - If a reporter is present, the reporter will produce a written transcript of the hearing.

- ♦ A reporter contracted by PERC (in “C”, “D”, “E”, “N”, and “U” cases) usually take about three weeks to produce a verbatim (exact) transcript of what was said at the hearing.
 - The reporter files the original transcript with PERC;
 - The reporter reserves the right to sell copies of the transcript to the parties, so parties that want a copy of the transcript need to purchase it from the reporter.
- ♦ A reporter contracted by the parties (in “A”, “F”, “I”, and “P” cases) also produces a verbatim (exact) transcript of what was said at the hearing.
 - The reporter must provide the original transcript or at least a copy to the PERC staff member or Dispute Resolution Panel member who held the hearing, with the cost for that copy paid by the parties.
 - The parties make their own arrangements with the reporter, including ordering and paying for their own copies of the transcript.
- ♦ A party that believes the reporter has misquoted what was said at the hearing can ask to have the transcript corrected. The motion (or a stipulation of all parties) must be filed with PERC (and served on other parties) within 10 days after the transcript is received, unless the PERC staff member allows a different period. See WAC 10-08-219. The PERC staff member who held the hearing will give other parties a chance to respond to a motion filed by one party, and will rule on the motion.



Written Arguments - Written arguments (briefs) must be filed with PERC (and served on other parties) by the due date established by the PERC staff member. PERC staff members may allow a second round of (rebuttal) briefs on a case-by-case basis. If a party wants to delay a due date, it must follow the “continuance” procedure described above.

- ◆ The format of a written argument is much less important than its content;
- ◆ Focus on matters that remain in dispute after the hearing - don’t waste your time or the time of the PERC staff member on matters that are not in dispute;
- ◆ Base your arguments on the testimony and exhibits actually admitted in evidence at the hearing. DO NOT add facts that are not in evidence;
- ◆ Use state laws (RCWs), state rules (WACs), language of the applicable collective bargaining agreement, and previous PERC decisions (precedents) to support your position.



12. researching PERC precedents

Recent Decisions - The PERC website, www.perc.wa.gov, contains summaries of recently-issued PERC decisions in “C”, “D”, “E”, “N”, and “U” cases. There is no charge for this service.

- ◆ Click on the “Recent Decisions” link in the box on the right side of the PERC home page to see a list of cases;
- ◆ Click on the individual case(s) that are of interest to you.

PERC Search Engine - The PERC website, www.perc.wa.gov, also contains the full text of decisions in various categories, with a search engine to access those decisions. There is no charge for this service.

- ◆ Click on the “Search PERC Decisions” link in the box on the right side of the PERC home page, and select one of the available databases:
 - ▶ The “Representation / Unit Clarification” database includes only decisions that can be cited as precedent (dating back to 1976) on “C” and “E” cases;
 - ▶ The “Unfair Labor Practices / Nonassociation” database includes only decisions that can be cited as precedent (dating back to 1976) on “N” and “U” cases;
 - ▶ The “Certifications” database includes only case numbers, decisions numbers, dates, and unit descriptions for certifications issued in “E” cases or equivalents;
 - ▶ The “All of the Above” choice includes the “Representation / Unit Clarification” “Unfair Labor Practices / Nonassociation” and “Certifications” databases;
 - ▶ The “Interest Arbitration / Fact-Finding” database includes only decisions on “F” and “I” cases processed by PERC since 1976; and
 - ▶ The “Recent Decisions” database is an alternative way to access the summaries of recent decisions described above.

Parties are entitled to rely upon the statutory interpretations and other legal principles contained in decisions issued by PERC from previous cases, if the cases are similar to a current case.

- ◆ Insert a word or phrase that is of interest to you. (Avoid terms like “public”, “employment”, “relations”, “commission”, “collective” and “bargaining” when using the search engine, because those words inevitably occur in all PERC decisions.)
- ◆ The system will return a list of decisions that contain your selected word or phrase.
- ◆ Click on a listed decision to view the full text of the decision.

Commercial Publications - Various private firms have published (or are publishing) some or all PERC decisions that can be cited as precedent in “C”, “D”, “E”, “N”, and “U” cases.



- ◆ The *Washington Public Employment Relations Reporter* (WPERR), formerly published by Book Publishing Company (Seattle), included PERC decisions back to 1976. Publication of the WPERR has ceased, but copies continue to be available in some libraries and in PERC’s offices. There is no charge to use the materials in PERC’s offices.
- ◆ *Westlaw*, an internet-based service of West Publishing Company (Minnesota), includes PERC decisions dating back to 1976. It is available in some libraries and some law offices. Westlaw charges subscription and/or user fees for that service.
- ◆ *LexisNexis*, an internet-based division of Reed Elsevier Inc. (Ohio), includes PERC decisions dating back to 1976. It is available in some libraries and some law offices. Lexis charges subscription and/or user fees for that service.

Additions or changes to the list of publications can be found on our website at www.perc.wa.gov. If you have questions, please call the Public Employment Relations Commission at (360) 570-7300.

13. issuance of a PERC staff decision

Content of Decisions - The decision in each case is based on the evidence presented at the hearing in that case, the parties’ arguments, and legal research performed by the PERC staff.

How are Decisions Communicated? - A written decision is mailed to all parties and representatives listed on the PERC docket record for the case. **The content or result of a decision cannot be disclosed before the decision is issued. Don’t even ask!**

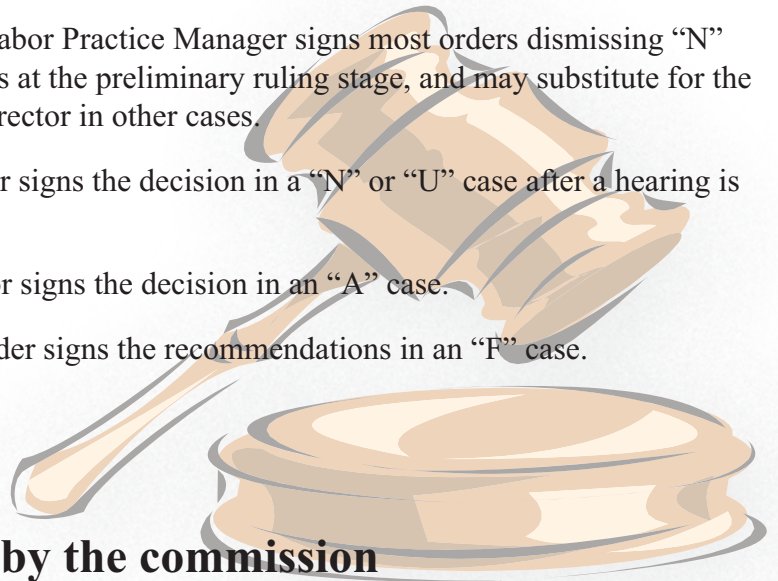
When Should I Expect a Decision? - PERC staff members try to issue all decisions in a timely manner, using the following time targets:

- ◆ In “C”, “E”, “N”, and “U” cases, PERC staff members strive to issue decisions within 90 days after the transcript and all written arguments have been filed.
- ◆ In “F” and “I” cases, state laws contain specific timelines, but parties often agree to modify those time limitations.

The authority to sign decisions varies according to the type of case and other circumstances

• • •

- ◆ In “A” cases, time limitations in the parties’ collective bargaining agreement are subject to delay, if the PERC staff member is busy with other assignments.
- ◆ The Executive Director signs the decisions on most “C” and “E” cases but can delegate authority to the Hearing Officer in some of those cases.
- ◆ The Executive Director signs orders dismissing some “N” and “U” cases at the preliminary ruling stage of case processing.
- ◆ The Executive Director signs routine orders closing cases that have been settled by the parties.
- ◆ The Operations Manager may substitute for the Executive Director in some cases.
- ◆ The Unfair Labor Practice Manager signs most orders dismissing “N” and “U” cases at the preliminary ruling stage, and may substitute for the Executive Director in other cases.
- ◆ The Examiner signs the decision in a “N” or “U” case after a hearing is held.
- ◆ The Arbitrator signs the decision in an “A” case.
- ◆ The Fact-Finder signs the recommendations in an “F” case.



14. appeals and decisions issued by the commission

When an appeal is filed in a “C”, “E”, “N”, or “U” case, the Commission members consider the documents in the case file, the testimony and exhibits received by the Hearing Officer or Examiner, and the written arguments filed by the parties. The Commission members do not hold a hearing or receive additional evidence, but may hear oral arguments in unusual cases.

- ◆ The Commission decides **whether there is substantial evidence** supporting the Findings of Fact made in the staff decision.
- ◆ The Commission decides **whether the Findings of Fact support the Conclusions of Law** in the staff decision.
- ◆ Decisions by the Commission are not subject to any time limitation, but the Commission tries to issue its decisions as expeditiously as possible.
- ◆ The Commission members appointed by the Governor sign the decisions on appeals. A quorum consisting of two of the three Commission members can act on a case.

INDEX/DEFINITIONS

TERM OR PHRASE	DEFINITION	PAGE(S)
Adjudicative Proceeding	A legal process in which state law gives parties an opportunity for a hearing before an agency such as PERC issues a decision. See RCW 34.05.010(1). The “C”, “D”, “E”, “N”, and “U” cases processed by PERC are adjudicative proceedings.	3
Administrative Procedure Act (APA)	Chapter 34.05 RCW is the state law that details many procedures for adjudicative proceedings.	3
Agreement	See “Collective Bargaining Agreement”.	
Answer	A written response to an unfair labor practice complaint, filed by the party accused of violating a state collective bargaining law.	6
APA	See “Administrative Procedure Act”.	
Appeal	A process in which the Commission members appointed by the Governor review the evidence and the parties’ arguments, together with the written decision issued by the Executive Director or other PERC staff member in a “C”, “E”, “N” or “U” case. The Commission can affirm, modify or reverse the decision on appeal.	19
Arbitration	A procedure in which an impartial Arbitrator makes a final and binding decision concerning a labor-management dispute. There are two types: <ul style="list-style-type: none"> ♦ Grievance Arbitration (“A” and “P” cases) decides the interpretation or application of an existing collective bargaining agreement ♦ Interest Arbitration (“I” cases) decides the future interests of the parties by establishing the terms of a new collective bargaining agreement. 	5, 6, 11
Arbitrator	A PERC staff member or member of PERC’s Dispute Resolution Panel who holds a hearing and issues a final and binding arbitration award in an “A”, “I” or “P” case, and who must comply with the “Code of Professional Responsibility for Arbitrators of Labor-Management Disputes” adopted by the National Academy of Arbitrators as approved by the Federal Mediation and Conciliation Service.	2, 5, 6
Association	See “Union”.	
Award	A written decision issued by an Arbitrator.	5, 6
Bargaining	See “Collective bargaining”.	
Bargaining Unit	A group of employee classifications or positions that have a community of interests for the purposes of bargaining with their employer.	1, 2
Bargaining Unit Work	Changes on which notice and bargaining may be required (and for which unfair labor practice claims may be processed in “U” cases) include contracting out or transferring work that has historically been performed (or could be performed) by the employees in an existing bargaining unit.	1, 2
Blocking Charge	The proceedings in an “E” case may be suspended where the misconduct alleged in a related unfair labor practice complaint could improperly affect the outcome of an election. See WAC 391-25-370.	5
Brief	See “Written argument”.	
Burden of Proof	The responsibility placed upon a party to prove its claims or allegations by a preponderance of evidence.	12

TERM OR PHRASE	DEFINITION	PAGE(S)
Certificate of Service	If another party claims you did not serve a paper, you must produce a written record that was made by the person who served the papers on the same day that he or she served the papers, and which lists how and when the papers were served on the other party or parties.	9
Certification	A written order issued by the Executive Director to designate a particular organization as the exclusive bargaining representative of a bargaining unit, or to state that the employees in the unit have chosen no representative.	2, 5
Citing PERC Decisions	Parties can rely upon previous PERC decisions in similar cases. The proper format for citing decisions is described in WAC 391-08-670.	17, 18
Clarification	See “Unit Clarification” and Chapter 391-35 WAC.	
Closing Argument	See “Written argument”.	
Collective Bargaining	The process in which employers negotiate with organizations selected by their employees to establish the wages, hours and terms and conditions of employment for the employees.	1, 2
Collective Bargaining Agreement	A written contract signed by employer and union officials to record the agreements they have reached in collective bargaining.	1, 2, 7
Commission	Public Employment Relations Commission. Members appointed by the Governor adopt rules and decide appeals from decisions issued by the Executive Director and other PERC staff members in “C”, “E”, “N”, and “U” cases.	4, 18
Complainant	The party who files a Complaint Charging Unfair Labor Practices (PERC Form U-1).	6, 7
Complaint	The formal paper filed to start a “U” (Unfair Labor Practice) case. Use of PERC Form U-1 is strongly encouraged.	6, 7
Computation of Time	The method used to compute time periods (days or months) allowed in state laws and PERC rules is found in WAC 391-08-100.	6
Confidential Employee	A person who participates formulating an employer’s labor relations policy, prepares or conducts collective bargaining negotiations for an employer, administers collective bargaining agreements for an employer, or assists in those functions. Confidential employees are excluded from all collective bargaining rights. See WAC 391-35-320.	5
Confidentiality of PERC Records	Materials exempt from public disclosure include “showing of interest” documents filed in “E” cases and the contents of mediation files in “G” and “M” cases. See WAC 391-08-810.	6, 8, 9
Consolidation of Proceedings	Two or more cases that are related to one another will sometimes be consolidated for processing by PERC. See WAC 10-08-085.	6
Continuance	Any postponement or extension of a hearing or of a deadline. See WAC 391-08-180.	8
Contract	See “Collective Bargaining Agreement”.	
Correction of Transcript	Following issuance of a transcript in a “C”, “D”, “E”, “N” or “U” case, parties who participated in the hearing may request for corrections in the transcript. See WAC 10-08-219.	6, 16

TERM OR PHRASE	DEFINITION	PAGE(S)
Cross-check	An optional process used by PERC in some “E” cases, to determine whether a union has majority support. The PERC staff compares the signatures on authorization cards provided by the union with signature documents provided by the employer. If the union has valid cards from more than 50% of the employees in the bargaining unit, it will be certified as exclusive bargaining representative.	2, 5
Cross-examination	Asking a witness called by another party questions, to determine the validity of the testimony given by the witness. Leading questions are allowed.	13, 16
Decertification	A process by which employees in a bargaining unit can get rid of their existing union. The employees file an “E” case, using PERC Form E-1. PERC conducts an election and certifies the result.	5, 7
Declaratory Order	A written decision issued by the Commission (with the consent of all affected parties under RCW 34.05.240 and WAC 391-08-520), to state whether or how a state law (RCW) or rule (WAC) administered by PERC applies to a specific set of circumstances.	5
Deficiency Notice	A letter sent to all parties in a “C”, “E”, “N”, or “U” case, to point out defects in the petition or complaint, and to give a deadline to cure those defects by filing an amended petition or complaint.	6
Direct Examination	A party asking a witness it has called questions to support its own claim or position. Leading questions are not allowed, except where the witness is aligned with another party (a “hostile” witness).	13, 14
Discovery	Court procedures allowing pre-hearing interviews of witnesses that may be called by another party. PERC’s rules do not authorize discovery.	8
Dispute Resolution Panel	A list of persons pre-qualified to serve as impartial dispute resolvers. Parties can request referrals of names from PERC for “F”, “G”, “I”, and “P” cases. Use Forms A-1 and G-1.	5, 6, 7
Docket	PERC maintains computerized records on all cases it processes. A four-part case number is assigned to each case. See WAC 391-08-650.	9
Election	The secret balloting process used by PERC in most “E” cases, to determine whether a union has majority support. PERC elections are usually by mail ballot. If a majority of the employees who cast ballots vote for the union, it will be certified as exclusive bargaining representative.	5
Employee	A person covered by a state law that PERC administers.	3, 5
Employee Organization	See “Union”.	
Employer	Entity with employees covered by a state law that PERC administers.	3
Evidence	Testimony of witnesses and exhibits offered at a hearing to prove disputed facts in a case. The rules of evidence used in courts are not controlling in PERC cases, but may be considered.	12-15
Examiner	A PERC staff member who holds a hearing and issues a written decision in a “N” (nonassociation) or “U” (unfair labor practice) case.	6
Exclusive Bargaining Representative	An organization (union) that has the support of a majority of the employees in a bargaining unit.	1, 2, 5

TERM OR PHRASE	DEFINITION	PAGE(S)
Executive Director	The full-time agency head and day-to-day administrator of PERC, who issues written decisions in some cases.	4, 5, 19
Exhibits	Any document, photograph, or physical object offered at a hearing to prove disputed facts in a case.	9, 14, 15
Ex Parte	Improper communications between an impartial dispute resolver and one party to a dispute when the other party/parties is not present.	9
Fact-Finding/Fact-Finder	An “F” case, available only under Chapter 41.59 RCW and Chapter 41.80 RCW. A PERC staff member or Dispute Resolution Panel member holds a hearing and issues written (non-binding) recommendations on reasonable terms of settlement for a new collective bargaining agreement.	2, 5, 17
Field Staff	A term sometimes used informally to refer to the PERC staff members who provide dispute resolution services under working titles such as: “Arbitrator”, “Examiner”, “Fact-Finder”, “Hearing Officer” and “Mediator”.	4
Field Services Manager	PERC staff members who supervise teams within the PERC field staff.	4
File with PERC/Filing	Actual receipt of papers at PERC’s Olympia office. Papers left after close of business are deemed filed on next day the PERC office is open. <ul style="list-style-type: none"> ♦ Papers may be delivered in-person or by commercial parcel delivery company to PERC (at 112 Henry Street NE Suite 300 Olympia WA). ♦ Papers may be sent to PERC through the U.S. mail (to P.O. Box 40919, Olympia, WA 98504-0919). ♦ Papers may be sent by email attachment (to filing@perc.wa.gov) or by fax (to 360-570-7334), but you must also mail the original papers to PERC the same day. Incomplete or illegible documents will not be considered. If receipt of a fax concludes or an email is received after 5:00 p.m., the papers are deemed to be “filed” on next day the PERC office is open for business. 	9
Grievance	A claim that an existing collective bargaining agreement is not being properly interpreted or applied.	2, 5, 6, 7
Grievance Arbitration	See “Arbitration”.	
Grievance Mediation	See “Mediation”.	
Grievance Procedure	The steps established in a collective bargaining agreement that the parties are to follow to resolve grievances.	2
Guild	See “Union”.	
Hearing	A proceeding where parties present evidence and arguments to an impartial Arbitrator, Examiner, Fact Finder, or Hearing Officer.	2, 4, 5, 6, 10-16
Hearing Officer	A PERC staff member who holds a hearing (and may be delegated authority to issue a decision) in a “C” or “E” case.	5, 11, 19
Hearsay	Testimony about something a witness may have heard or read about, but has not personally done or observed. Hearsay is always weaker than testimony and documents based on a witnesses’ own knowledge, and the person who made the original statement or took the original action is not available for cross-examination.	6, 13

TERM OR PHRASE	DEFINITION	PAGE(S)
Impartial	Does not take sides in presenting evidence or arguments in a dispute.	4, 8
Interest Arbitration	See “Arbitration”.	
Interpreter	A person who assists a limited English-speaking person or a hearing impaired party or witness at a hearing.	10
Investigation Conference	A semi-formal process (usually done by telephone conference call) where PERC’s Representation Coordinator and all parties to an “E” case discuss a limited list of issues. See WAC 391-25-220. Afterwards, the Representation Coordinator issues a written Investigation Statement reciting any agreements reached by the parties. That statement is binding on the parties unless a timely objection is filed or it is modified for good cause. See WAC 10-08-130.	5, 6, 10
Labor Organization	See “Union”.	
Leading Question	Questions that suggest the answer the person asking the question wants to hear. Parties are not allowed to ask their own witnesses leading questions, but can ask leading questions in cross-examining witnesses called by other parties.	13
Manager	Persons who make policy decisions for or commit the resources of an employer, and are sometimes excluded from collective bargaining rights in “C” and “E” cases. See RCW 41.80.005(6)(c) and (12); RCW 41.06.022.	5
Mediation	Intervention by a PERC staff member (or other impartial person), to help an employer and union to improve communications, explore alternatives, and exchange “what if” proposals, to resolve a dispute. Mediators do not have a power of compulsion. There are two types of mediation: <ul style="list-style-type: none"> ◆ “G” cases resolve grievances concerning the interpretation or application of an existing collective bargaining agreement ◆ “M” cases resolve disputes in negotiations for collective bargaining agreement. 	5-7
Mediator	A PERC staff member who assists the parties in “G” and “M” cases. Members of the PERC staff comply with the “Code of Professional Conduct for Labor Mediators” adopted by the Association of Labor Relations Agencies.	5-7
Model Rules of Procedure	Chapter 10-08 WAC, adopted to as state-wide rules for adjudicative proceedings under the APA. See RCW 34.05.250.	6
Motion	A request by a party to resolve an issue or an entire case on legal grounds. PERC rules only allow limited types of motions. PERC does not encourage other motions, but they can be considered and granted on a case-by-case basis. Before deciding whether to grant or deny a motion, the PERC staff member may set a due date for written responses to the motion, and/or may convene a conference (usually by telephone conference call) to hear the parties’ arguments on the motion.	8-10
Negotiation	See “Collective Bargaining”.	
Neutral Chairperson	A PERC staff member or Dispute Resolution Panel member who holds a hearing and issues a written decision establishing terms of a collective bargaining agreement in an “I” case.	5
Non-adjudicative Proceeding	Case processing that is not regulated by the APA, including the “A”, “F”, “G”, “I”, and “M” cases processed by PERC.	3, 6

TERM OR PHRASE	DEFINITION	PAGE(S)
Nonassociation	State laws give employees with religious beliefs against union membership to make alternative payments instead of paying union dues under union security provisions of a collective bargaining agreement. An “N” case. Use of PERC Form N-1, Petition for Ruling on Nonassociation Claim, is strongly encouraged.	6, 7, 11, 12
Notice of Case Filing	A computer-generated form mailed by PERC when a case is docketed, to provide the case number and the contact information then on file. Parties are asked to update the contact information if there are any changes.	9
Notice of Hearing	A formal paper issued by the PERC staff to announce the date, time and location of a hearing.	10
Opening Statement	A formal paper issued by the PERC staff to announce the date, time and location of a hearing.	12
Operations Manager	A PERC staff member who screens incoming “A”, “C”, “G”, and “M” cases, and distributes them among the teams within PERC’s field staff.	4
Objection	A claim by one party that something done by another party is improper. There are two types: <ul style="list-style-type: none"> ♦ At a hearing, a party can object if it believes that a question being asked or exhibit being offered by another party is improper ♦ After an election conducted by PERC, a party that believes actions of the PERC staff or conduct by another party improperly affected the outcome of the election can file a written objection within seven days after the tally of ballots is issued. See WAC 391-25-590. 	12-14
Panel	See “Dispute Resolution Panel”.	
Panel Coordinator	A PERC staff member who maintains the information on Dispute Resolution Panel members and provides lists of panel members to parties.	6
PERC	See “Commission”.	
Petition	A paper used to file a unit clarification case (PERC Form C-1), a representation case (PERC Form E-1), or a nonassociation case (PERC Form N-1).	7
Petitioner	The party that files a petition with PERC.	
Prehearing Conference	A conversation (usually by telephone conference call) before a hearing, where a PERC staff member discusses procedural issues with representatives of all parties. Afterwards, the PERC staff member may issue a written record of agreements made or actions taken. That statement is binding on the parties unless a timely objection is filed or it is modified for good cause. See WAC 10-08-130.	5, 6,10
Preliminary Ruling	A letter sent to all parties in “N” or “U” cases, stating that sufficient facts have been alleged to warrant a hearing on the case. All of the facts alleged in a petition or complaint are assumed to be true and provable for this purpose. Because PERC does not investigate the facts or evaluate the quality or quantity of evidence available to support factual allegations, the issuance of a preliminary ruling does not predict the ultimate outcome of the case.	6

TERM OR PHRASE	DEFINITION	PAGE(S)
Public Employment Relations Commission (PERC)	See “Commission”.	
RCW	The Revised Code of Washington, which contains Washington laws.	3
Record of Appearance	A computer-generated form mailed by PERC when updated contact information or a notice of appearance is received on a case.	9
Record of Service	A computer-generated form mailed to all parties and representatives with any notice or decision issued by PERC, showing the names and addresses of all persons who have been sent copies of the papers.	9
Remedy	The relief requested by a party or ordered by PERC to correct or compensate for an alleged violation of an agreement or statute.	1
Reporter or Court Reporter	A person who takes down the testimony of witnesses and arguments of parties at a hearing, and prepares a transcript of the hearing. PERC contracts with reporters to obtain the transcript it needs for “C”, “D”, “E”, “N”, and “U” cases, and parties can purchase their own copies from the reporter.	11-13, 16
Representation Case/Representation Petition	An “E” case under Chapter 391-25 WAC. Use of PERC Form E-1, Petition for Investigation of Question Concerning Recommendation is strongly encouraged.	5, 7
Representation Coordinator	A PERC staff member who handles the initial processing of “E” cases, as well as conducting elections and cross-checks.	5
Representative	A person who acts on behalf of another person or organization in a PERC proceeding. See WAC 391-08-010.	1, 2, 5
Respondent	The party accused of violating state law.	6, 12
Serve/Service	Providing other parties with a copy of papers filed with PERC in a case. Papers must be served no later than the day the paper is filed with PERC. Service can be made personally, by U.S. mail, by commercial delivery company, by fax, or by e-mail attachment. The person who serves papers should make and preserve a certificate of service. See WAC 391-08-120.	9
Showing of Interest	Individual cards or letters signed and dated by employees in a bargaining unit to indicate their support for a petition in an “E” case. PERC preserves the confidentiality of these materials. See WAC 391-25-110.	5
Statute	A state law. See also Revised Code of Washington (RCW).	3
Statute of Limitations	Most state laws administered by PERC require that an unfair labor practice complaint be filed with PERC within 6 months after the act or event claimed unlawful. Chapter 28B.52 RCW does not contain a statute of limitations.	6
Submit/Submitted	See “filing”.	
Subpoena	A formal order directing a person to give testimony at a hearing, and sometimes directing the person to bring papers or other evidence to the hearing. See WAC 391-08-300 and -310.	10

TERM OR PHRASE	DEFINITION	PAGE(S)
Summary Judgment	A motion made by a party (either before or at a hearing), to claim there are no facts in dispute and that the party making the motion is entitled to a judgment as a matter of law. See WAC 10-08-135.	6
Supervisor	Persons with authority to act on behalf of an employer to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances. A person who makes effective recommendations on such matters can be categorized as a supervisor. If supervisors have bargaining rights, they are routinely placed in separate bargaining units. See WAC 391-35-340.	5
Teleconference Hearing	Conducting part or all of a hearing by telephone.	10
Transcript	The official written record of a hearing produced by a reporter. The transcript includes everything spoken in the hearing room while hearing is in session. Corrections of a transcript are made under WAC 10-08-219.	11, 12, 16
Unfair Labor Practice (ULP)/Unfair Labor Practice Complaint	<p>A “U” case under Chapter 391-45 WAC. Use of PERC Form U-1, Complaint Charging Unfair Labor Practices, is strongly encouraged. Examples of unfair labor practices include:</p> <ul style="list-style-type: none"> ◆ Employer or union interference with collective bargaining rights given to employees in the applicable state law, including the right to refrain from union activity ◆ Employer dominion of a union, by either providing support to the union or interfering in its internal affairs ◆ Employer discrimination against union activities or refraining from union activity, or a union asking an employer to engage in unlawful discrimination ◆ Employer or union discrimination against employees who file unfair labor practice charges or give testimony before PERC ◆ Employer failure or refusal to bargain with a union holding status as exclusive bargaining representative of its employees, or union failure or refusal to bargain with an employer when it holds status as exclusive bargaining representative of that employer’s employees, including: <ul style="list-style-type: none"> ▶ Failure to meet at reasonable times and places; ▶ Breach of the obligation to bargain in good faith; ▶ Refusal to provide information requested by the opposite party for contract negotiations or contract administration; ▶ Changing wages, hours and working conditions of bargaining unit employees (including transferring bargaining unit work to employees outside of the unit) without notice to the union and an opportunity for bargaining; and ▶ Insisting to impasse on proposals that are not a mandatory subject of collective bargaining. 	1, 6, 7
Unfair Labor Practice Manager	A PERC staff member who handles the initial processing of “N” and “U” cases.	4
Union	Any lawful organization that represents employees for the purpose of collective bargaining. Terms like “association,” “bargaining representative,” “employee organization,” “guild” and “labor organization” are interchangeable with “union.” A constitution or bylaws is not required, but the organization must be able to prove its purpose and that it exists separate and apart from its members.	1, 2

TERM OR PHRASE	DEFINITION	PAGE(S)
Union Security	<p>An employer and union may agree in a collective bargaining agreement to impose financial obligations on employees in the bargaining unit covered by that contract. Examples include:</p> <ul style="list-style-type: none"> ♦ Agency Shop - Bargaining unit employees who do not choose to join the union may still be required to pay a service fee to the union ♦ Maintenance of Membership - No employee is required to join the union, but employees who voluntarily join are required to remain union members ♦ Union Shop - Bargaining unit employees are required to join the union or pay the equivalent of union dues within 30 days after commencing their employment or the effective date of the contract, whichever is later. <p>The “Closed Shop” (which required employers to hire only union members) was outlawed by federal law in 1947 and is also illegal under Washington state laws</p>	1, 6
Unit Clarification/Unit Clarification Petition	<p>Proceedings under Chapter 391-35 WAC, where parties ask PERC to modify a bargaining unit after a change of circumstances. Use of PERC Form C-1, Petition for Clarification of Bargaining Unit, is strongly encouraged</p>	5, 7
WAC	<p>The Washington Administrative Code contains rules adopted by PERC and other agencies to interpret or implement state laws (RCW)</p>	4-6
Website	<p>The PERC website is: www.perc.wa.gov</p>	3, 4, 6, 7
Window Period	<p>The period of time during the life of a collective bargaining agreement when a representation petition (PERC Form E-1) can be filed to seek a change of unions or a decertification of the union -</p> <ul style="list-style-type: none"> ♦ The window period for state civil service employees (Chapter 41.80 RCW) is “not more than 120 days nor less than 90 days” before the expiration of the collective bargaining agreement. See WAC 391-25-036. ♦ The window period under all other laws administered by PERC is “not more than 90 days nor less than 60 days” before the expiration of the collective bargaining agreement. See WAC 391-25-030 	5
Witness	<p>A person who testifies at a hearing</p>	10-15
Written Argument	<p>A written statement filed by a party with PERC (and served on all other parties) after a PERC hearing, to explain what facts the party believes were proved at the hearing and the arguments being made by that party, as well as responses to the claims and arguments made by other parties</p>	16, 17, 19