



ANNUAL REPORT FOR 2022



PERC


PUBLIC EMPLOYMENT
RELATIONS COMMISSION



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Director's Message

I am proud to present the Public Employment Relations Commission's Annual Report for 2022.

As seen in the Annual Reports for 2020 and 2021, all the data since the beginning of the pandemic has shown no drop in the efficacy of our services when provided virtually. This allowed us to focus on the health and safety of our staff and clientele and be deliberate in weighing when we would resume conducting events in person. As a result, PERC continued to provide its services virtually in a nearly exclusive fashion in 2022.



Despite the data remaining positive, anecdotally we know some events are more effective when conducted in person, and 2022 marked the beginning of the transition to once again serving our clientele in this manner. PERC reopened its offices in April 2022 and began piloting a return to in-person services in October. The pilot positioned us to allow staff, at their discretion, to conduct any event in person starting January 1, 2023. We have not seen a clamoring from our clientele for in-person services. In many respects, the efficiency of scheduling a virtual event is more desirable than an in-person event.

We saw a change in the Commission in 2022. Ken Pedersen resigned from the Commission in July, and Elizabeth Ford was appointed to replace him in October. We thank Ken for his service, and we welcome Liz aboard. Liz has extensive service in labor relations as an advocate for both labor and management, as a neutral, and as a professor.

The year also marked the end of PERC's most recent strategic plan. In this report, we document how we did on that plan. Additionally, this report shows that PERC continues to lead in providing expert, impartial, and timely services to resolve and prevent labor-management disputes. Behind the data in this report are the dedicated, caring, and hard-working people of this agency. Without them, none of this would be possible. I continually hear from you your gratitude for their work and service. I echo you in that.

Mike Sellars, Executive Director

Agency Overview

PERC is an independent state agency created to implement Washington State's collective bargaining laws and resolve public-sector labor relations disputes. PERC has jurisdiction over collective bargaining for public employers in Washington.

The Commission

Chairperson Marilyn Glenn Sayan, Mark R. Busto, and Elizabeth Ford currently sit on the Commission. The Commission's function is to adopt rules and decide appeals of decisions issued by agency staff. Commissioners work part time and on a per-diem basis. They are appointed by the Governor for five-year terms. Commissioner biographies are available at <https://perc.wa.gov/commission>.

Executive Director

The Commission appoints the Executive Director who oversees the daily operations of the agency, determines bargaining unit configurations, and certifies bargaining unit representatives. The Executive Director also engages in outreach and training, mediation, and adjudication. Eight staff members report directly to the Executive Director.

Labor Relations Adjudicators/Mediators

Labor Relations Adjudicators/Mediators are classified state employees cross-trained to conduct both mediations and adjudications as well as conflict prevention services. They primarily work in the field, traveling to the parties' locations throughout the state.

Field Services Managers

Two Field Services Managers, one working in each of PERC's office locations, supervise a total of 16 Labor Relations Adjudicators/Mediators.

Employee and salary information is available in the State Employee Salaries database at <https://fiscal.wa.gov/Staffing/Salaries>.

MISSION

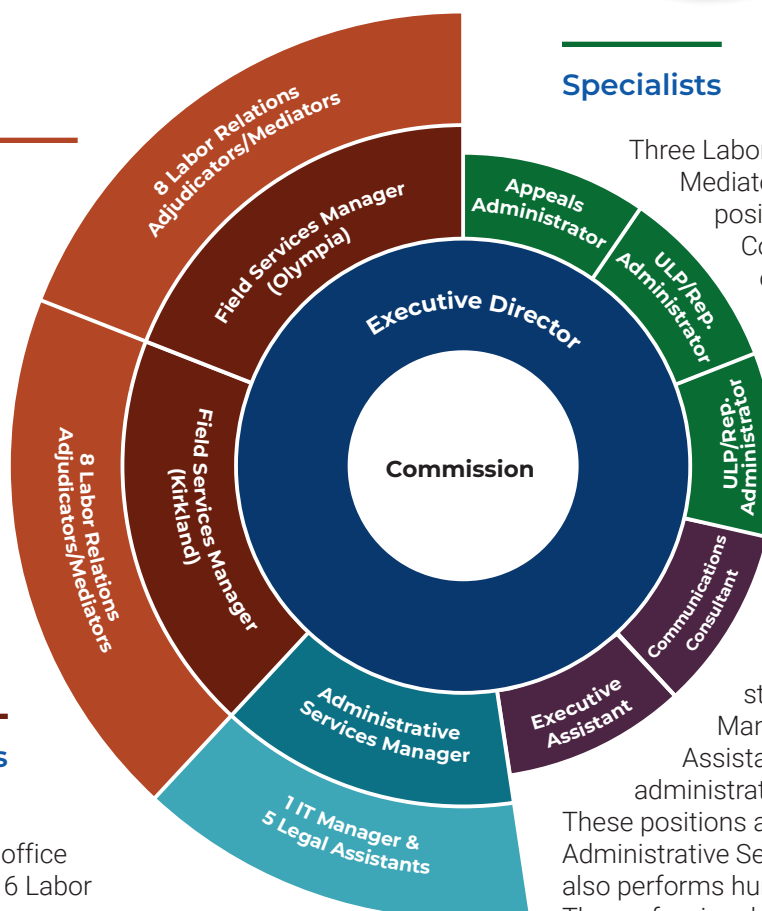
PERC provides expert, impartial, and timely resolution of labor-management disputes so that any disruption to public services is prevented or limited.

VISION

Leaders in labor relations and dispute resolution. Partners in improving labor-management relations.

VALUES

Excellence, Innovation, Integrity, Neutrality, Credibility, Respect, and Balance



Specialists

Three Labor Relations Adjudicators/Mediators work in specialist positions, one assisting the Commission with its work on appeals, and two jointly overseeing representation matters and managing the intake process for unfair labor practice complaints.

Professional Staff

The professional staff includes an IT Manager and five Legal Assistants that provide clerical, administrative, and technical support. These positions are supervised by the Administrative Services Manager, who also performs human resources functions. The professional staff also includes a Communications Consultant who oversees external communications, including the website, and the Executive Assistant to the Executive Director, who also functions as clerk to the Commission.

Final Report on 2020–22 Strategic Plan

When PERC completed its strategic plan in 2014, it identified five goals for PERC that stem directly from its statutory mandates. These goals are permanent in nature and carry over to subsequent strategic plans, including the 2020–22 Strategic Plan:

1. **Productive Labor Management Relations:** Improving the relationship between labor and public employers
2. **Right to Organize:** Ensuring public employees' right to organize
3. **Right to Collectively Bargain:** Ensuring public employees' right to collectively bargain
4. **Conflict Resolution:** Resolving labor-management disputes
5. **High Performing Organization:** PERC is a high-performing organization

Of these goals, the first—improving the relationship between labor and public employers—is the paramount or overarching goal. The remaining goals reinforce and roll up to that goal. The objectives and individual initiatives collectively help PERC meet all five goals and achieve its mission to prevent or minimize the disruption to public services through the impartial, timely, and expert resolution of labor-management disputes. Several initiatives and areas of emphasis in the plan addressed issues that PERC's clientele said were important.

PERC accomplished the vast majority of what it set out to do in the 2020–22 Strategic Plan, demonstrating that PERC met its legislative mandate and are leaders and partners in improving public-sector labor-management relations.



Objective 1: Deliver innovative and effective services in an accessible and efficient manner.

SERVICE IMPROVEMENT

- ☒ Review and revise agency templates to ensure they are clear, concise, and understandable. (2020)
- ☐ Explore requiring employers to submit current collective bargaining agreements and posting them on agency website (using current Decisia search engine). (2022)
Withdrawn due to work to put Law Enforcement Arbitrator Roster decisions on website pursuant to RCW 41.58.070.
- ☒ Revise rules.
 - ▶ Gather input on rules from Clientele Consultation Committee. (2020)
 - ▶ Share proposed rules revisions with staff for feedback. (2020)
Proposed rules revisions shared with staff in 2020–2022.
 - ▶ Rules Committee will review and incorporate staff feedback. (2020)
Staff feedback reviewed and incorporated in 2020–2022.
 - ▶ Share proposed rules revisions with Clientele Consultation Committee for feedback. (2020)
Proposed rules revisions shared with Clientele Consultation Committee in 2021 and 2022.
 - ▶ Rules Committee will review and incorporate Clientele Consultation Committee feedback. (2020)
Clientele Consultation Committee feedback reviewed and incorporated in 2021 and 2022.
 - ▶ Begin formal rule-making process on proposed revisions. (2020)
Comprehensive rule changes adopted by Commission in November 2022.
- ☐ Implement any rule changes adopted by Commission. (2021–2022)
Rules not adopted until end of 2022.

CONTINUE TO MODERNIZE TECHNOLOGY

- ☒ Continue to enhance and modernize technology. PERC enhanced its Zoom and Dropbox footprint to ensure that it continued providing services throughout pandemic.
- ☐ Implement e-filing for all cases. (2020)
Delayed due to a variety of factors. Expected to be open to external users by end of 2023.
- ☐ Explore feasibility of party access to their case information in Salesforce. (2021)
Not started due to delays in e-filing project.
- ☒ Ensure website meets industry accessibility standards. (2020)
- ☒ Publish decisions in an accessible format. (2020)
- ☐ Use Zingtree to better inform parties on representation case process. (2020)
Deferred to explore different ways of educating and informing parties about representation process.

Objective 2: Continue to issue timely, cogent, and legally sound decisions.

- ☒ Issue timely decisions. (Ongoing)
- ☒ 80% of Examiner decisions are issued within 90 days of the close of the record.
Over the three years of strategic plan, 98% of Examiner decisions issued timely.
- ☒ 90% of Executive Director decisions are issued within 90 days of the close of the record.
Over the three years of strategic plan, 100% of Executive Director decisions issued timely.
- ☐ 100% of Commission decisions are issued within 180 days of the close of the record.
Over the three years of strategic plan, 89% of Commission decisions issued within 180 days of the close of the record.
- ☒ Issue cogent, legally sound decisions. (Ongoing)
- ☐ 100% of decisions are unchanged following appeal to court.
Over the three years of strategic plan, one decision was changed following appeal to court.
- ☒ Update agency style guide. (2020)

Objective 3: Conduct effective and responsive mediations.

- ☒ Explore assigning a mediator to any unfair labor practice case that receives a preliminary ruling. (2020)
Deferred with pandemic but explored rule change below.
- ☒ Explore a rule change that would clearly give the Executive Director authority to order mediation. (2020)
Initially proposed rule change but ultimately not put forward for final adoption.
- ☒ Further develop staff mediation skills through training, research, book and article review, and discussion. (Ongoing)
Efforts primarily giving staff skills and training to provide virtual services with same effectiveness as if in person.
- ☒ Assess effectiveness of mediation through Field Services Managers' observations of mediation. (Ongoing)
- ☒ Explore developing additional online mediation training for clientele. (2021)
The Negotiation Project—which includes online modules, regular podcasts, and monthly Zoom sessions—launched in 2020–2022.

Objective 4: Ensure public employees exercise their right to choose through an accessible, clear, efficient, and equitable representation process.

IMPROVE TIME TO ELECTION AND CARD CHECK

- ☒ Shorten time to election or card check. (Ongoing)
- ☒ Assess ways to streamline process for resolving disputed positions. (2021)
- ☒ Modify rules that unnecessarily delay the time to election or card check. (2020)
Focused on areas, outside of rules, that delay elections or card checks.

CLEAR AND ACCESSIBLE REPRESENTATION PROCESS

- ☐ Use Zingtree to better inform parties on representation case process. (2020)
Deferred to explore different ways of educating and informing parties about representation process.

- ☐ Develop representation training. (2021)
- ☒ Post more descriptive statuses of pending representation cases on website. (2020)
- ☒ Keep pending representation cases on website until dismissal or certification. (2020)

Objective 5: Expand conflict prevention and outreach services.

CONFLICT PREVENTION

- ☒ More accurately track training and outreach data (types of training requests). (2020)
- ☐ Assess data from types of training provided to inform new training offerings. (2021)
- ☒ Expand online training offerings or tools. (Ongoing)
The Negotiation Project—which includes online modules, regular podcasts, and monthly Zoom sessions—launched in 2020–2022.
- ☒ Develop and deliver a negotiations training module. (2020)
- ☐ Explore developing quality assessment tool for training. (2022)

BEST PRACTICES AND OUTREACH

- ☒ Engage in dialogue with Clientele Consultation Committee regarding PERC services and labor relations issues facing the community. (2020)
- ☒ Continue to be an active member of the Association of Labor Relations Agencies (ALRA). (Ongoing)
- ☒ Continue to be active in the Northwest Chapter of the Labor and Employment Relations Association (LERA) by co-sponsoring and presenting at the annual LERA conference. (Ongoing)
- ☒ Regularly communicate agency performance on website and social media. (Ongoing)

Objective 6: Provide accessible, clear, and timely agency communications.

- ☒ Regularly communicate agency performance on website and social media. (Ongoing)
- ☒ Issue annual report. (Ongoing)

- ☒ Continue Lean process improvement approach to review processes to ensure they are clear and understandable. (2020–2021)
Any process improvement review has been more on an ad-hoc or specific process basis rather than a comprehensive review.
- ☒ Establish plan to review standard communication and forms to ensure they are clear and understandable. (2020)
- ☒ Ensure templates meet accessibility standards. (2020, Ongoing)
- ☒ Ensure website meets industry accessibility standards. (2020)
- ☐ Ensure items covered in Practitioner's Guide are addressed on agency website. (2021)
- ☐ Retire Practitioner's Guide. (2022)

Objective 7: Ensure that staff have the capacity, commitment, resources, and support to meet the agency mission and vision.

AGENCY TOOLS

- ☒ Ensure technology is sustainable and allows agency to adapt and utilize tools that will enhance service delivery. (Ongoing)
- ☒ Complete agency deskbook. (2020)
- ☐ Review samples and procedures currently in staff manual to ensure it contains most recent and correct versions, then issue in separate document. (2020–2021)
- ☐ Sunset current staff manual. (2022).
- ☒ Annually gather staff feedback on training needs. (Ongoing)

STAFF DEVELOPMENT

- ☒ Deliver training based upon feedback. (Ongoing)
Most of training was related to delivering virtual services.
- ☐ Explore feasibility of meaningful peer recognition vehicle. (2021)
- ☒ Timely complete performance evaluations and expectations. (Ongoing)

- ☐ Conduct mid-year reviews. (Ongoing)
- ☒ Explore cross-training opportunities. (Ongoing)
- ☐ Make ALRA Academy available to all new Commissioners. (Ongoing)
No ALRA Academy occurred.
- ☒ Review and revise new Commissioner orientation. (2021)

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Objective 8: Maintain expert staff to deliver services.

- ☐ Review, and revise as appropriate, current Labor Relations Adjudicator/Mediator hiring process. (2020)
- ☐ Revise decision-writing scenario for Labor Relations Adjudicator/Mediator hiring process. (2020)
- ☒ Increase diversity of hiring pools through outreach. (Ongoing)
- ☒ Support diversity in the workplace by fostering a culture of inclusion. (Ongoing)
- ☒ Work with the Office of Financial Management to ensure proper comparators are selected for salary survey of classified positions. (2021)

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Objective 9: Continue to be a credible resource on labor law developments, trends, issues, and research.

- ☒ Continue to utilize membership in ALRA to research and share best practices and developments regarding labor relations and neutral agencies' administration of collective bargaining statutes. (Ongoing)
- ☒ Continue to research labor relations and dispute resolution developments and best practices. (Ongoing)
- ☒ Continue to support and provide opportunities for staff to develop and demonstrate their expertise (ABA LEL, LERA, ALRA, NW ADR, teaching, membership on arbitrator panels). (Ongoing)
- ☒ Communicate expertise and developments as appropriate. (Ongoing)
- ☒ Complete agency deskbook. (2020)

PERC accomplished the vast majority of what it set out to do in its most recent strategic plan.

These accomplishments helped PERC meet its mission and be a leader in labor relations and dispute resolution.

Milestones in 2022



The PERColator Podcast Launched

In January, PERC launched The PERColator Podcast. Hosted by PERC staff members Chris Casillas, Matt Greer, and Emily Martin, the podcast is the latest effort by the PERC Negotiation Project to connect negotiation theory with practice of public sector labor relations in Washington State. **The PERColator Podcast is believed to be the first of its kind for any labor relations agency.**

Expertise of PERC Staff Further Recognized

PERC staff member Chris Casillas was recognized by Seattle University School of Law as the 2022 Outstanding Adjunct Professor. Chris has taught a range of courses spanning the topics of Separation of Powers, Second Amendment, Voting Rights, Constitutional Law, Labor Law, and Negotiations. Chris is also an affiliate professor at the University of Washington Law School. A number of staff and a commissioner have taught various law school classes.



PERC staff member Emily Martin is the public chair of the State and Local Collective Bargaining and Employment Law Committee of the American Bar Association's Labor and Employment Law Section. Additionally, PERC Executive Director Mike Sellars became the president of the Association of Labor Relations Agencies (ALRA), the association of impartial government agencies responsible for administering labor-management relations laws or services in the United States and Canada. Mike is the third ALRA president from PERC, joining its first executive director Marv Schurke and Commission Chair Marilyn Glenn Sayan.

Elizabeth Ford Appointed to the Commission

In October, Elizabeth Ford was appointed to the Commission. Ford is an Assistant Professor at Seattle University School of Law, where she teaches the Workers' Rights Clinic. Ford previously taught at the University of Washington School of Law, where she also served as Assistant Dean.



Ford has also served as Chief Counsel for the Washington State Nurses Association, the Director of Labor Relations for King County, and a partner at a labor-side law firm representing unions and individuals. Additionally, Ford has served on many boards and commissions, including the Marine Employees Commission and Seattle Civil Service Commission.

Ford's appointment filled the opening created by Ken Pederson's resignation.

Strategic Plan Developed

PERC completed its 2020–22 Strategic Plan and developed its 2023–25 plan. The plan can be viewed online at <https://perc.wa.gov/agency-overview>.

PERC Reopened Offices and Piloted Return to In-Person Services

PERC reopened its offices in April 2022 but, like in many workplaces, PERC staff worked a hybrid of in the office and remotely throughout the year. Late in 2022, PERC began piloting a return to in-person services. During the pilot, requests for in-person services went through the executive director taking into account a variety of factors, and only three requests were received.

Totals for All Services and Internal and External Meetings Conducted Virtually in 2022

3,340	2,185,255	40,467
virtual sessions	minutes	participants

Implementation of Law Enforcement Arbitrator Roster

In 2021, the legislature passed RCW 41.58.070, which requires the Commission to create and maintain a roster of arbitrators to conduct disciplinary grievance arbitrations involving law enforcement personnel. The statute provides that only members of that roster may conduct such arbitrations. Appointments to individual cases are made by the executive director on a rotating alphabetical basis. The Commission is required to set the fee schedule for these arbitrations.

RCW 41.58.070 became effective in 2021. In September 2021, the Commission appointed 18 arbitrators to the roster. Appointments began in 2022, and 20 appointments were made by the end of the year. In some instances, the employer argued that the grievance at issue was not disciplinary. However, PERC has no role in determining the question of arbitrability. Five arbitration decisions were issued under this statute. Pursuant to the statute, PERC maintains the decisions in a newly added database on its website.

Rules Revisions Completed

In 2022, PERC culminated its years' long rules review and revision process with the Commission's adoption of the proposed rule changes.

Beginning in 2018—but with a break in 2020 during the first year of the pandemic—an internal committee began reviewing agency rules with a goal to modernize (e.g., removing gender-specific language) and streamline them to make them more understandable. The committee also looked to address specific points that had been raised since the last comprehensive review. The committee sought input from staff and clientele. Eventually, proposed revisions were drafted and shared with staff, clientele, and the Commission for review and comment. Any changes based on that feedback went through a similar process.

The proposed changes were brought to the Commission in November for final adoption. The revisions resulted in 26 new rules, the repeal of 72 rules, and amendments to 131 rules. New procedural rules were adopted for dispositive motions and for an advisory opinion process for interest arbitration eligible state bargaining units.

26
new rules

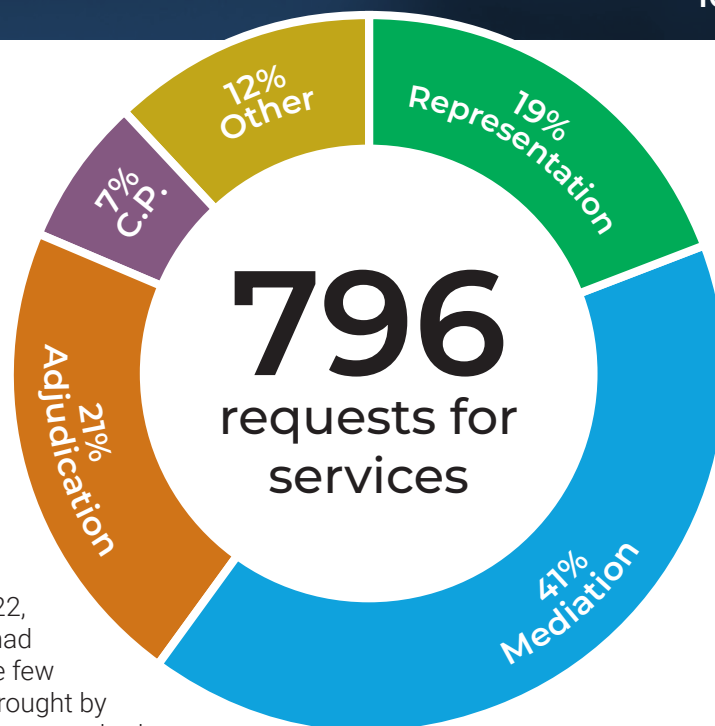
131
rules
amended

72
rules
repealed

Strategic Service Delivery

As a neutral entity, PERC protects the collective bargaining rights granted to approximately 475,000 public employees through the fair and timely administration of mediation, adjudication, representation, and conflict prevention services.

During the pandemic, clientele filed approximately 100 cases involving vaccine mandates or other COVID-related protocols. Most of these filings were grievance mediation requests followed by unfair labor practice complaints and requests to mediate collective bargaining agreements. By 2022, most of the mediations of collective bargaining agreements had been resolved, and parties continued to make progress on the few that remained open. Of the unfair labor practice complaints brought by unions, none had gone to hearing and a few remained open, but most had been resolved as well. Several COVID-related unfair labor practice complaints filed by self-represented individuals went to hearing in 2022, with none resulting in the finding of a violation.



Looking Back at 2022

In 2022, even though PERC was still operating virtually in a nearly exclusive manner, the volume of case filings continued to move toward the pre-pandemic average. PERC saw a 16% increase in requests over 2020. Requests for conflict prevention services, the most impacted by the pandemic, continued to lag behind higher levels in recent years, while the volume of requests to mediate collective bargaining agreements began to rebound. Representation activity, particularly for new organizing, remained strong.



Representation

Elections • Bargaining Unit Clarifications

- ▶ The number of election petitions was the highest since at least 2012.
- ▶ Petitions to represent previously unrepresented employees comprised 75% of all election petitions.



Mediation

Collective Bargaining Agreements • Grievances • ULP Complaints

- ▶ The number of requests for grievance mediation dropped from its two-year high as pandemic-related policies eased or became normalized.
- ▶ The 14 requests to mediate CBAs for teachers was consistent with the previous 10 years' average.



Adjudication

ULP Complaints • Grievance Arbitrations • BU Configurations

- ▶ 2022 had the fewest number of examiner decisions since the year PERC was created and the fewest number of hearings.
- ▶ Time to hearing continued to rise.



Conflict Prevention

Training • Outreach • Facilitation • Online Resources

- ▶ Conflict prevention requests were 15% below the previous 10 years' average.
- ▶ PERC expanded its scope and reach of conflict prevention tools with The PERColator Podcast.

Other

Upon request, PERC provides parties with a randomly generated list of names from its panel of qualified private arbitrators. PERC assigns arbitrators from its Law Enforcement Arbitrator Roster to conduct disciplinary grievance arbitration for law enforcement personnel. PERC also certifies to interest arbitration any issues remaining in dispute following mediation for employees under certain statutes.



Representation

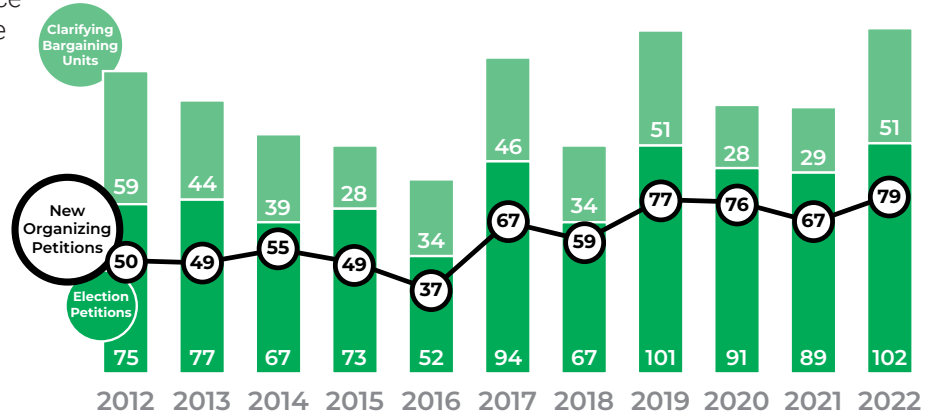
A cornerstone of the state's collective bargaining laws is the right of employees to decide whether to be represented for purposes of collective bargaining.



Representation activity increased following the United States Supreme Court's June 2018 decision in *Janus v. AFSCME*. The representation filings in 2022 continued that trend. In the years since *Janus*, there has been a 33% increase in the average number of election petitions.

Organizing of Unrepresented Employees Continued to Be High

The number of election petitions filed in 2022 was the highest since at least 2012. Of those petitions, **over 75% sought to represent unrepresented employees.**

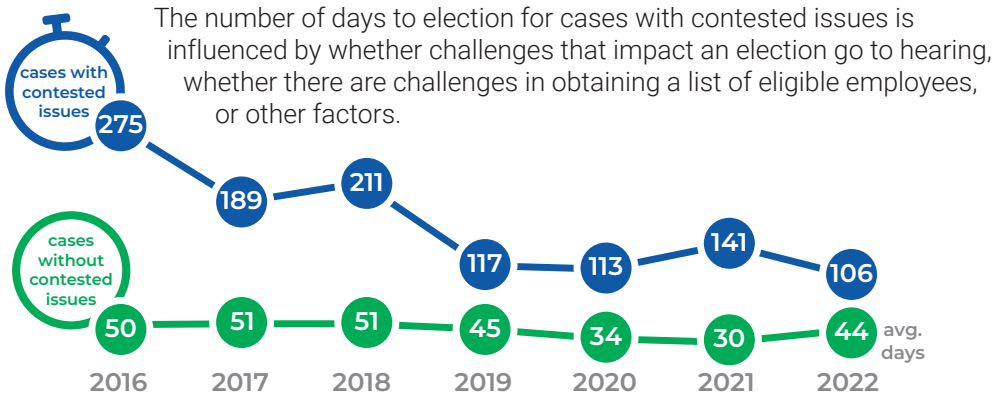


PERC Continued to Meet Its Goals for Time to Election

PERC strives to conduct elections within 45 days for cases without contested issues and within 180 days for cases with contested issues. PERC continued to meet those goals. In 2022, the 106-day average was the quickest that cases with contested issues moved to election since PERC began tracking this data in 2016.

Cases without contested issues met PERC's goal of going to election or card check within 45 days.

Elections in cases with contested issues occurred 35 days sooner than in 2021.



72

elections or elections by card check conducted

On par with previous five years' avg.

79%

of employees exercised their right to choose

5% lower than previous 10 years' avg.

56

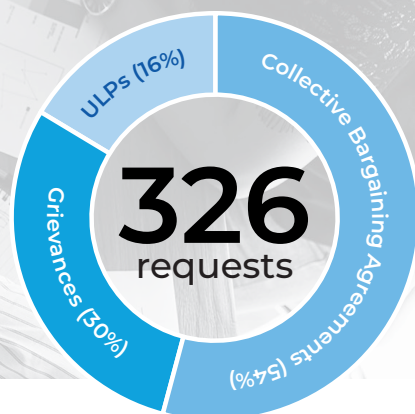
bargaining units created through election

Matching previous five years' avg.



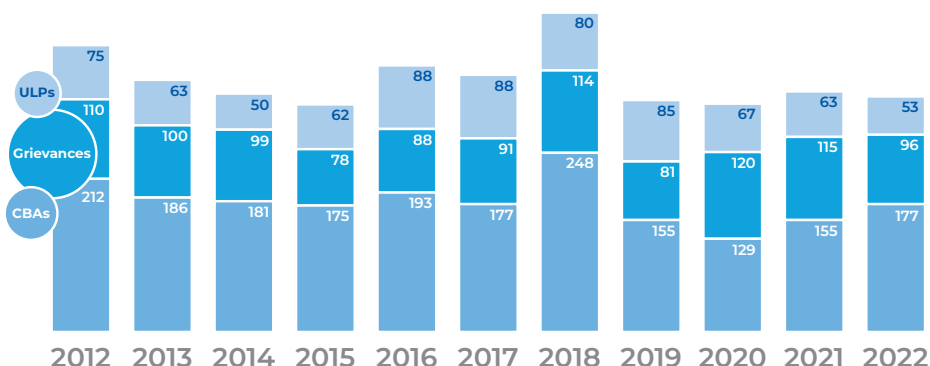
Mediation

In mediation, PERC staff members serve as neutrals to help parties in conflict define issues, explore solutions, and reach mutual agreement. Mediation is voluntary, and the parties are in control of any resulting agreements.

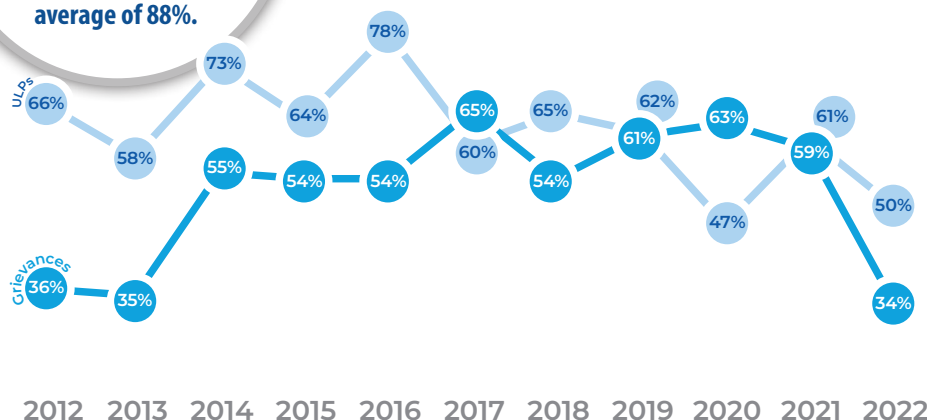


While the number of mediation requests overall was comparable to the number received in 2021, the types of requests received differed in 2022.

The number of requests to mediate collective bargaining agreements (CBAs) rebounded from the pandemic low in 2020. Requests for mediations of grievances dropped from the two-year high in 2020 and 2021. The volume of requests to mediate unfair labor practice (ULP) complaints was the lowest it has been in eight years.



Agreements were reached in **86%** of mediations involving CBAs, on par with the previous 10 years' average of 88%.



Agreements Reached

The agreement rate for mediations of both grievances and unfair labor practice complaints dropped in 2022. The agreement rate for grievance mediations dropped precipitously from 59% in 2021 to 34% in 2022. Driving this were the number of grievance mediations related to employer COVID and COVID vaccine policies and procedure.

Only two of the 39 COVID-related grievance mediation requests filed in 2021 and 2022 resulted in agreement, and one mediation opened in late 2022 was still pending at the time of this report.

Strikes

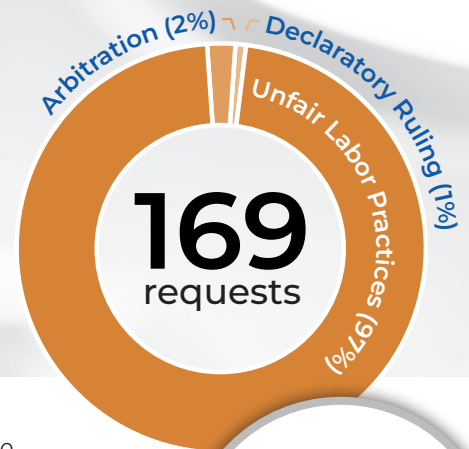
There were five strikes in 2022. Four of the strikes involved teachers in the Eatonville, Kent, Ridgefield, and Seattle School Districts and ranged from 7 to 13 days. The fifth strike involved librarians at the University of Washington who engaged in a one-day walkout in late 2022. All of these disputes eventually resolved with the parties reaching agreement.





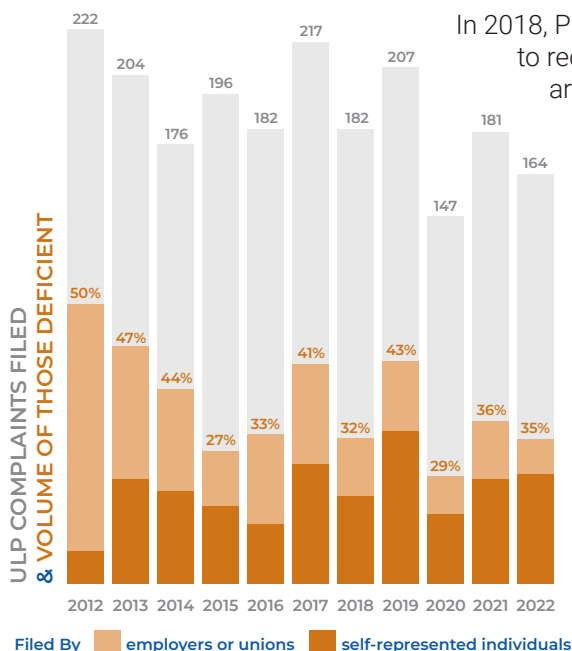
Adjudication

As recognized labor relations experts, PERC and its employees adjudicate unfair labor practice complaints, issues related to representation, and other various labor disputes.



Adjudication requests decreased to the second lowest amount since 1982. The number of unfair labor practice complaints was the second lowest since 2000.

Efforts to Reduce Deficient Complaints Continued to Pay Dividends, but There Is Still Room for Improvement



In 2018, PERC published on its website guidance material to reduce the number of deficient complaints, which are complaints that fail to state a cause of action.

Since filing parties are given an opportunity to amend them, deficient complaints cause twice the amount of work for staff who also review the amended complaints.

On the positive front, deficient complaints accounted for only 35% of all unfair labor practice complaints filed in 2022—below the average seen prior to the creation of the guidance materials. Of those deficient complaints, only 33% were able to be corrected. Many of the complaints where the deficiency could not be corrected involved self-represented individuals.

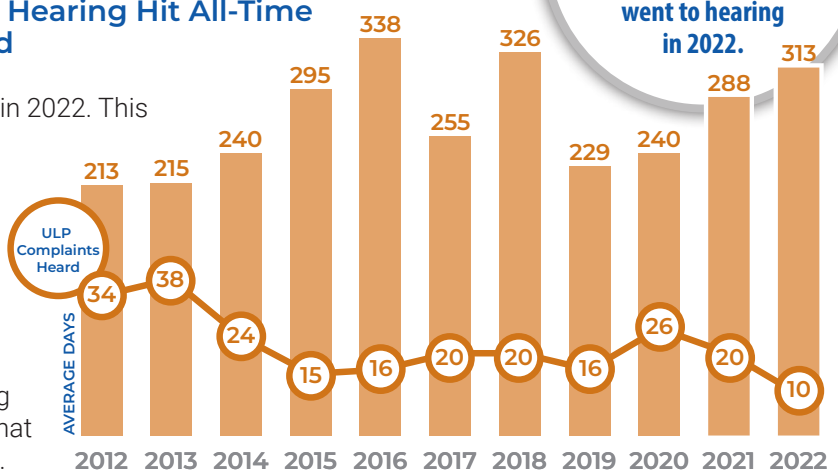
In 2022, 71% of complaints filed by self-represented individuals were deficient, and those complaints accounted for 76% of all deficient complaints. It is not clear whether these individuals attempted to file cases that would never have stated a cause of action under PERC statutes or whether there were specific issues driving the phenomena in 2022.

PERC will undertake efforts in 2023 and 2024 to examine tools for complainants, including self-represented individuals.

Number of Complaints That Went to Hearing Hit All-Time Low While Days to Hearing Increased

Ten unfair labor practice cases went to hearing in 2022. This was the lowest number in recent memory. No real reason jumps out as to why. At the same time, the average number of days to hearing increased.

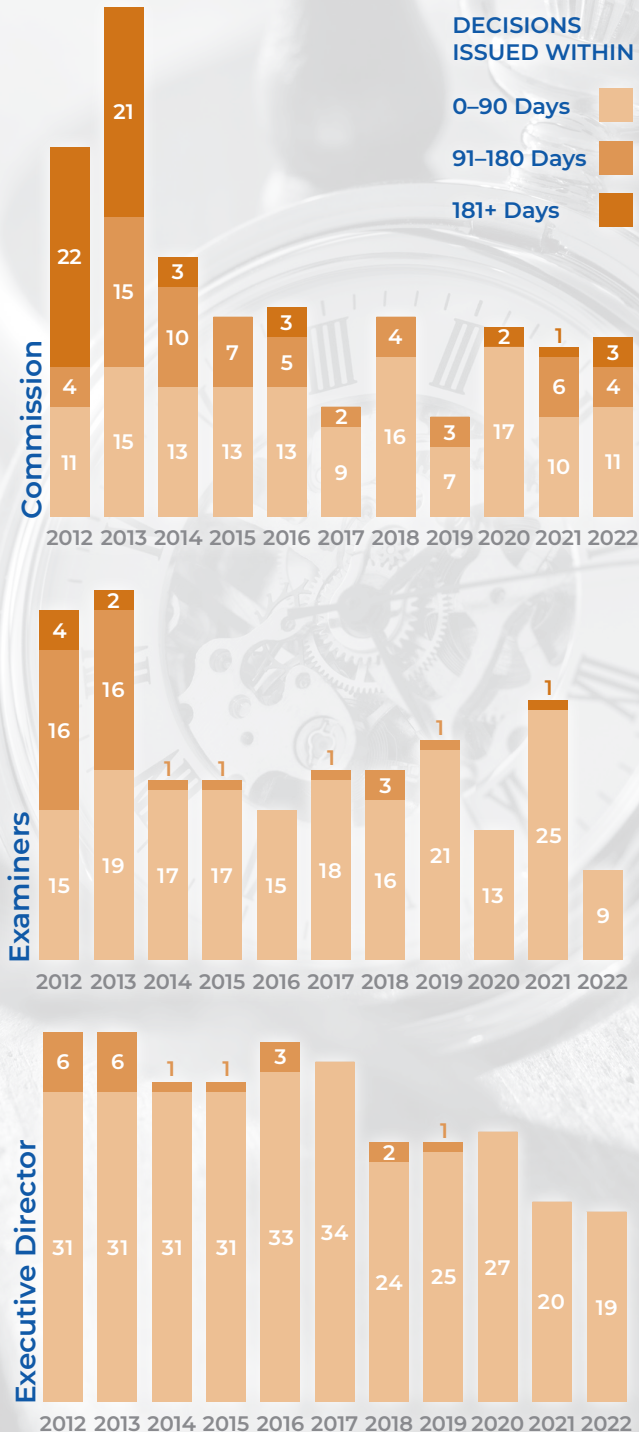
In a year where so few cases go to hearing, one case can greatly impact the average. Due to settlement efforts as well as witness unavailability, one case took 903 days from filing to the opening of the hearing in 2022. Without that case, the average time to hearing was 247 days.



Self-represented individuals filed 60% of the complaints that went to hearing in 2022.

Time to Decision

Since 2012, issuing timely decisions has been a consistent emphasis for PERC. Examiner and Executive Director decisions were issued well within the statutory deadline of 90 days from the close of the record in 2022. The average days to issue Commission decisions came down to 91 days from the recent high of 101 days in 2021. However, three decisions took over 180 days to issue with one decision taking 256 days.



Key Decisions in 2022



Washington State Ferries (Marine Engineers' Beneficial Association), Decision 13318-A (MRNE, 2022)

The statute authorizing collective bargaining for state marine employees provides that the employer is prohibited from bargaining over its budget and the size of its workforce. During negotiations for the 2021–2023 collective bargaining agreement, the union proposed a provision that specified the number of vacation relief staff for a particular position. The employer objected, claiming the matter is a nonmandatory subject of bargaining under the statute. The union disagreed and submitted the proposal to interest arbitration. The employer filed an unfair labor practice complaint.

The Commission affirmed the examiner's conclusion that the proposal, which established a minimum staffing level for a certain position within the employer's workforce, was precluded by the statute prohibiting bargaining over the size of the employer's workforce.



Ben Franklin Transit (Teamsters Local 839), Decision 13409-A (PECB, 2022)

The union's secretary-treasurer and lead negotiator engaged in "extreme, over-the-top, and continued used of foul language and ad-hominem attacks." The employer's director of human resources and labor relations, who was the recipient of some of these actions, sought a restraining order against the union official.

The Commission overturned the examiner's conclusion that the union official's actions had breached the union's good faith bargaining obligation. The Commission stated that much of the complained-of behavior occurred outside the statute of limitations and was not relevant to determine the propriety of the conduct. The Commission deemed it unnecessary to determine whether the offensive conduct was reasonable in order to determine whether it frustrated bargaining.

The Commission held that, in the absence of a pending representation petition, the Commission does not regulate speech by a union or union

members unless the speech is violent, intimidating, or invokes threats of reprisal. The Commission concluded that the conduct, while offensive and inappropriate in the workplace, did not involve threats of reprisal and was "constitutionally protected free speech."

The Commission concluded that the filing of the restraining order did not constitute a breach of good faith bargaining because the petition did not lack a reasonable basis or was not objectively baseless. The petition for the restraining order was not objectively baseless because the employee credibly believed that the union official was threatening them. The dissent argued that the action was objectively baseless because the court did not grant a permanent order.



City of Bellingham (Guild of Pacific Northwest Employees), Decision 13525-A (PECB, 2022)

The Guild of Pacific Northwest Employees replaced the Washington State Council of County and City Employees (WSCCCE) as the exclusive bargaining representative for the bargaining unit. The change of representative election was contentious. An employee who supported the WSCCCE and who disagreed with actions taken by the Guild against the WSCCCE created an imposter Facebook page for the Guild. On that page, the employee posed as the Guild and posted content critical of the Guild.

The Guild filed a lawsuit against the employee for trademark infringement and other claims. The employee filed an unfair labor practice complaint against the Guild. The Commission affirmed the examiner's conclusion that the lawsuit was not objectively baseless because the Guild reasonably believed it could establish a case of trademark infringement. Accordingly, the lawsuit did not constitute an unfair labor practice of unlawful interference.



University of Washington, 13483-A (PSRA, 2022)

In 2020, the University received concerns from campus groups and others over the University's police officers patrolling student residence halls. In response, the University transferred this work from the uniformed police officers to a newly created classification of Campus Security

Responder outside of the bargaining unit.

The Commission reversed the examiner's conclusion that the transfer of work did not constitute an unfair labor practice. The Commission held that the transfer of work was not a management prerogative or at the core of the University's entrepreneurial control and that issues of police conduct around the country did not justify the transfer.

The dissenting opinion asserted that the University's decision to change its policing model in residence halls was within its entrepreneurial control. The dissent held that the University's interest in reimagining its public safety model to limit interactions between armed campus police officers and students to matters for which the police officers are uniquely qualified outweighed the slight impact to the bargaining unit.



Spokane County, Decision 13510-B (PECB, 2022)

The employer enacted a resolution requiring it to conduct collective bargaining negotiations in public. Following the enactment of that resolution, the employer and union attempted to reach agreement on ground rules, including whether bargaining would occur in public. The parties were unable to reach agreement, and the union demanded to bargain mandatory subjects. The employer refused unless the union agreed to bargain in public. The parties did not reach agreement. The union renewed its demand to bargain, and the employer likewise refused to bargain unless the parties bargained in public.

The Commission affirmed the examiner's conclusion that the employer had committed an unfair labor practice. Bargaining procedures, such as whether bargaining will occur in public or private, are permissive subjects of bargaining. Neither party may condition bargaining on a permissive subject. The employer's refusal to bargain unless the parties bargained in public was a violation.

Both the examiner and the Commission dismissed the employer's argument that the unfair labor practice complaint must have been filed within six months of the passage of the resolution. The Commission noted that the resolution only stated the employer's policy for how it wanted to conduct negotiations and

Washington State Language Access Providers, Decision 13355-B, which held that implementation of a new scheduling system was part of the dynamic status quo, is pending in court.

Read the full decisions online at [decisions.perc.wa.gov](https://perc.wa.gov).

did not trigger the statute of limitations. Moreover, each request to negotiate mandatory subjects of bargaining and subsequent refusal is a new event for computing the statute of limitations.



Washington State Language Access Providers, Decision 13344-B (PECB, 2022)

Multiple unions petitioned to represent language access providers who provide spoken language services for the Washington State Department of Labor and Industries. When a representation election is conducted and there are multiple unions on the ballot, the election is only conclusive if the winner receives a majority of those in the bargaining unit.

In the first election, while the winning union received nearly 80% of the ballots cast, it was still shy of the

majority of the bargaining unit. PERC conducted a runoff election, where only a majority of ballots cast is required for the election to be conclusive, and the same union received just over 80% of the ballots cast.

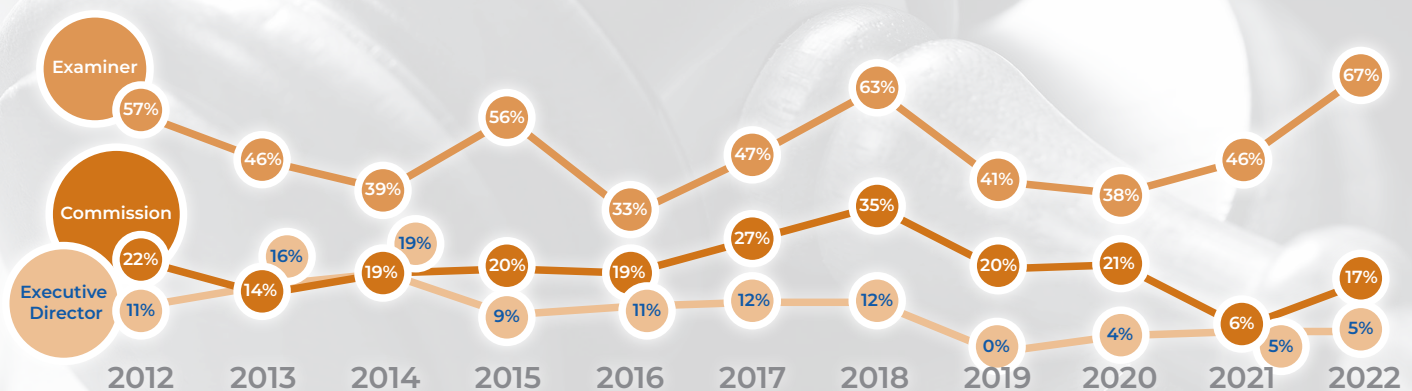
The losing union filed election objections on various grounds. The Commission sustained two objections and ordered a new election. The Commission found that the winning union improperly stated that the losing union could cancel the runoff election and erroneously told the employees that they must complete a petition with the union in order to vote in the election. The Commission held that these two actions were deceptive and warranted a new runoff election.

Since 2012,
87%
of Commission decisions
have remained
unchanged following
appeal to court.

Decisions on Appeal

Decisions issued by the Labor Relations Adjudicators/Mediators and the Executive Director may be appealed to the Commission, and the Commission's decisions may be appealed to court. PERC continues to make every effort to issue sound decisions, and the volume of unchanged decisions at the court level is an indicator of PERC's success.

The Commission fully affirmed the examiners in 80% of the appealed decisions that came before it. Of the three Commission decisions issued and appealed to court in 2022, one was affirmed, one was withdrawn, and one is currently pending.



9

Examiner
decisions issued

The fewest in a single year since
PERC was created.

18

Commission
decisions issued

22% below the previous 10 years'
average.

19

Executive Director
decisions issued

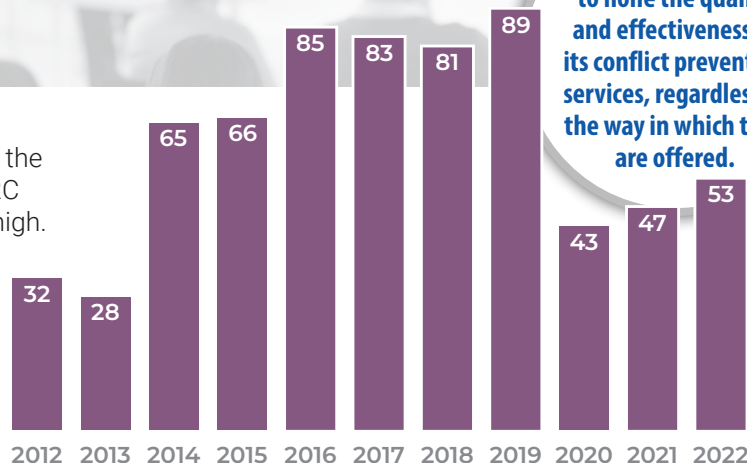
38% below the previous 10 years'
average.



Conflict Prevention

PERC's conflict prevention services help parties improve relationships, increase partnerships, and avoid mediation or unfair labor practice proceedings.

The volume of conflict prevention cases has been the most impacted by the pandemic, and in 2020 PERC saw a 52% drop from the previous year's all-time high. Although the volume of requests has slowly increased in each of the last two years, they have not rebounded to pre-pandemic levels. The numbers may, in part, have also been impacted by PERC offering only virtual services through 2022. Even so, the feedback from participants in virtual conflict prevention services has remained very positive, just as it was for in-person services.



PERC continues to hone the quality and effectiveness of its conflict prevention services, regardless of the way in which they are offered.

PERC Continued to Expand Scope and Reach of Conflict Prevention Services



Building on the opportunities that virtual services provide, through The Negotiation Project PERC continued to offer monthly sessions over Zoom on a variety of topics related to collective bargaining. Between April and November 2022, these sessions, which are open to all practitioners, drew an average of 33 participants.

In 2022, PERC expanded offerings from The Negotiation Project by launching The PERColator Podcast. Hosted by staff members Chris Casillas, Matt Greer, and Emily Martin, The PERColator Podcast also explores topics related to collective bargaining and other aspects of dispute resolution and prevention.

Traditional Training

Of the 9 types of traditional training PERC offers, the most requested types in 2022 were

- ▶ Interest Based Bargaining, which focuses on jointly understanding interests before exploring solutions and reaching consensus.
- ▶ Collaborative Bargaining, which draws techniques from both interest based bargaining and traditional bargaining to create a bargaining process based on the parties' needs.

PERColator Podcast

Of the 25 PERColator Podcast episodes launched in 2022, the most notable topics included

- ▶ How food, the bargaining table setup, and small talk advance bargaining
- ▶ Profiles of labor practitioners
- ▶ The Extended Mind
- ▶ Addressing emotions at the bargaining table


25
episodes
launched in
2022

Monthly Zoom Sessions

Of the 10 Zoom sessions held in 2022, the most popular topics discussed were

- ▶ Bargaining in the age of high inflation
- ▶ Recruitment and retention challenges in bargaining
- ▶ The State bargaining process

Between the PERColator podcast and monthly Zoom sessions, PERC provided over 20 hours of content to help practitioners in 2022.



Since its inception, PERC has strived to be a credible leader in labor relations and dispute resolution. While this goal remains a constant, PERC will continue to be proactive, innovative, and accessible to better serve its clientele moving forward.

On the Horizon

ISSUES

➔ Student Employees Bargaining at Four-Year Institutions

PERC will process representation petitions and conduct elections or card checks for student employees at regional four-year institutions who gained bargaining rights in 2023.

➔ WMS Employee Bargaining

PERC is preparing to implement the statute giving bargaining rights to state employees who are in the Washington Management Service beginning in 2024.

➔ Legislative Staff Bargaining

PERC is also preparing to implement the statute giving bargaining rights to staff of the state legislature beginning in 2024.

INITIATIVES

➔ Return to In-Person Services

Beginning in January 2023, individual PERC staff members will have the discretion to decide whether to conduct an event in person or virtually.

➔ 2023–2025 Strategic Plan

PERC will begin implementing its new strategic plan.

➔ E-Filing

PERC will begin external testing of an e-filing component that is integrated with the agency's case management system. PERC aims to have its clientele begin full usage of e-filing by the end of 2023.

➔ Implement Rules Revisions

PERC will implement rule changes adopted by the Commission in 2022, including the new procedural rules for summary judgment and advisory opinions for state interest arbitration eligible groups.