



ANNUAL REPORT

FOR 2017

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Overview

The Public Employment Relations Commission (PERC) is an independent state agency created to help resolve public-sector labor relations disputes. PERC administers 10 different collective bargaining laws covering approximately 475,000 public employees.

Mission

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

Vision

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

Values

- ▶ Innovation
- ▶ Excellence
- ▶ Credibility
- ▶ Neutrality
- ▶ Integrity
- ▶ Balance
- ▶ Respect

Jurisdiction

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

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

Director's Message

I am pleased to share with you the Public Employment Relations Commission's Annual Report for 2017.

This report builds upon last year's report—our first since 2008—which showed that PERC effectively and efficiently provides quality, unbiased, expert labor relations and dispute resolution services.

In 2017, the number of requests for services was well above the previous five years' average. There was a 62 percent increase in representation petitions over those filed in 2016. Nonetheless, we decreased the number of days to election in cases with contested issues. The number of requests for conflict prevention services was also well above the previous five years' average. We met our goal to begin developing online training and launched an online training module focusing on the question, "What is Mediation?" At the same time, we continued to issue decisions well within required time frames.

PERC managed this work while experiencing more staff turnover. In 2016, we began working with the state human resources office to more appropriately align our job classifications within state government and to positions performing similar work for other neutral labor relations agencies. Those efforts were completed in 2017 and will help us recruit and maintain quality, expert staff. We also converted a vacant Field Services Manager position to a field-level Labor Relations Adjudicator/Mediator position in order to ensure the timely delivery of services.

We know that PERC must continue to be innovative and adaptable in providing its services. We continue to make our website a resource of useful content to help the public, employees, unions, and employers navigate the state's collective bargaining laws.

Looking forward, we will seek to continuously improve our services and service delivery. It is more important than ever that PERC, like all neutral labor relations agencies, be a credible source of information. I am grateful to all the dedicated labor relations professionals and other staff who make PERC be just that.



Mike Sellars, Executive Director



“It is more important than ever that PERC, like all neutral labor relations agencies, be a credible source of information.”

The Agency

Chairperson Marilyn Glenn Sayan, Mark E. Brennan, and Mark R. Busto currently sit on the Commission. The Commission's function is to adopt rules and decide appeals of decisions issued by agency staff.

Commissioners are part-time and appointed by the governor for five-year terms. Commissioner biographies are available at <https://perc.wa.gov/commission>.

Including the Executive Director, PERC only has 30 employees working out of offices located in Olympia and Kirkland.

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. Seven 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. They primarily work in the field, travelling 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.

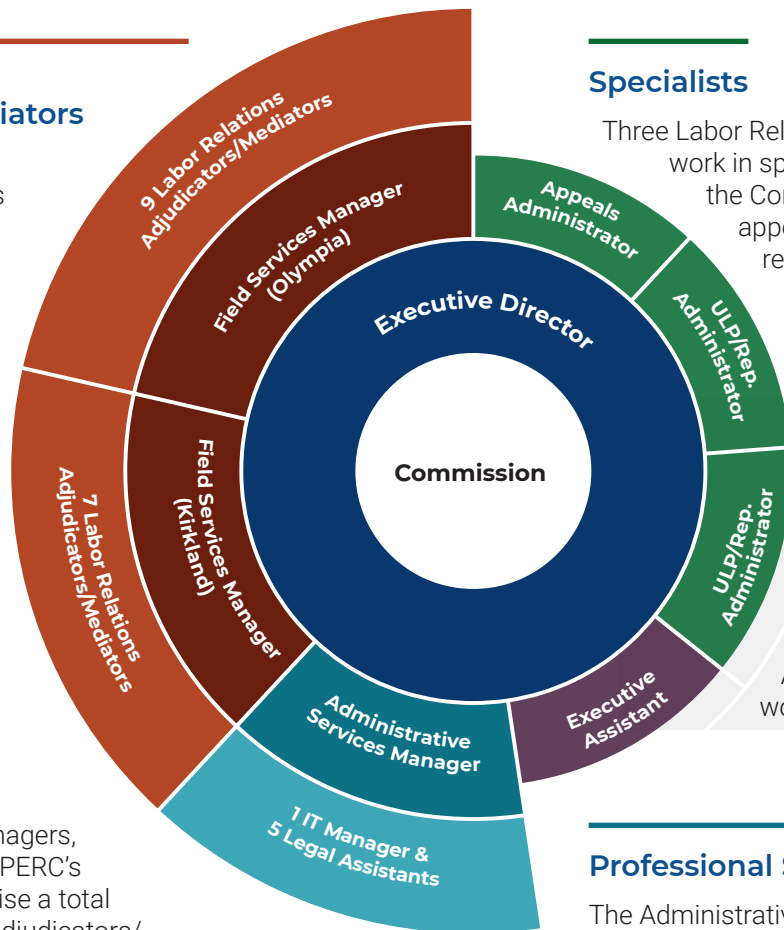
Specialists

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.

These specialist positions are in a newly created classification reserved for positions that oversee statewide programs. These positions are between the Field Services Managers and the Labor Relations Adjudicators/Mediators who work in the field.

Professional Staff

The Administrative Services Manager supervises an IT Manager and five Legal Assistants. The Administrative Services Manager and the professional staff provide administrative and technical support.



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

Milestones

Overview of Accomplishments in PERC's Service Delivery



Representation

- ▶ Reduced time to election.



Conflict Prevention

- ▶ Made online training available.



Mediation

- ▶ Helped parties mutually reach agreement in 96 percent of mediations over collective bargaining agreements.



Adjudication

- ▶ 82 percent of decisions remained unchanged following appeal to court.

Continued Improvements Make the PERC Website a Valuable Tool for All

PERC continued to improve its website. PERC also strengthened the security of its website to prevent malicious traffic. In 2017, over one-third of all visits to the website came from mobile devices.

Functionality Added to the Decision Search Engine

In 2017, PERC implemented Lexbox with Decisia, PERC's decision search engine. Lexbox is a tool that helps users conduct better, more effective research of PERC decisions. Lexbox allows users to save and manage their research.

The decision search engine is the most visited part of PERC's website. Decisia allows users to subscribe to an email list to be notified when a new decision is posted on the website.



PERC on Social Media

PERC is on Twitter @WashPERC, providing links to notable decisions, the most recent updates on PERC's website, and more.

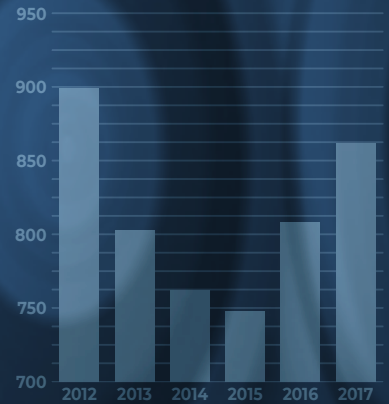
Recognized Experts in the Field

PERC and its employees are recognized experts in the field. PERC employees are active in national and local committees on public-sector labor relations and dispute resolution. In 2017, PERC again cohosted with the Federal Mediation and Conciliation Service and the National Labor Relations Board another successful Labor and Employment Relations Association (LERA) conference, which brought together over 500 practitioners from labor and management as well as labor relations neutrals.

PERC is also an active participant in the Association of Labor Relations Agencies (ALRA), an association of impartial government agencies in the United States and Canada responsible for administering labor-management relations laws or services. With ALRA, PERC is able to share its best practices as well as identify other ways to deliver its services in a more effective and efficient manner.

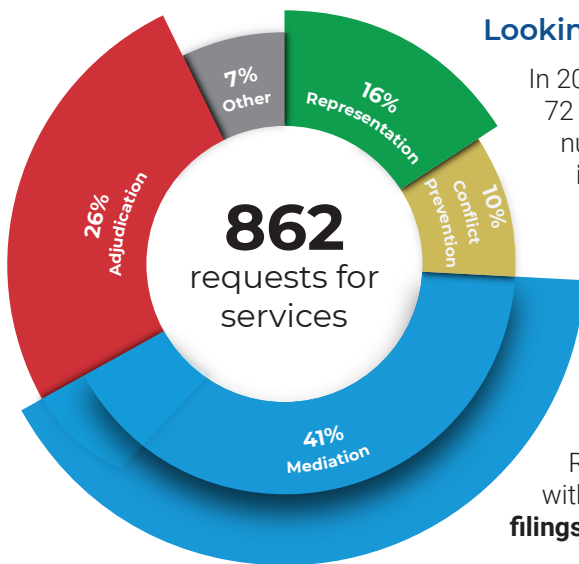
PERC cohosted another successful LERA conference, which brought together over 500 labor relations professionals.

Strategic Service Delivery



PERC oversees the rights guaranteed by the 10 collective bargaining statutes under its jurisdiction through the fair and timely administration of representation, conflict prevention, mediation, and adjudication services.

As a neutral third party, PERC responds to an **average of 800 requests for services annually** from public employees, employers, and unions.



Looking Back at 2017

In 2017, parties made 862 requests for services, averaging 72 cases each month. This was the second highest annual number since 2012. Notably, there was a **62 percent increase in representation case filings** over 2016.

The demand for conflict prevention services continued to grow. The number of requests for these services represented a **49 percent increase** over the previous five years' average. In an effort to strategically reach and meet the needs of more of our clientele, PERC began offering online training in 2017.

Requests for mediation services remained steady and in line with the previous five years' average, but **adjudication case filings increased by 16 percent** over 2016.



Representation

- ▶ Elections
- ▶ Bargaining Unit Clarifications



Conflict Prevention

- ▶ Training
- ▶ Outreach
- ▶ Facilitation
- ▶ Online Resources



Mediation

- ▶ Collective Bargaining Agreements
- ▶ Grievances
- ▶ Unfair Labor Practice Complaints



Adjudication

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

Other

▶ Dispute Resolution Panel Requests

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

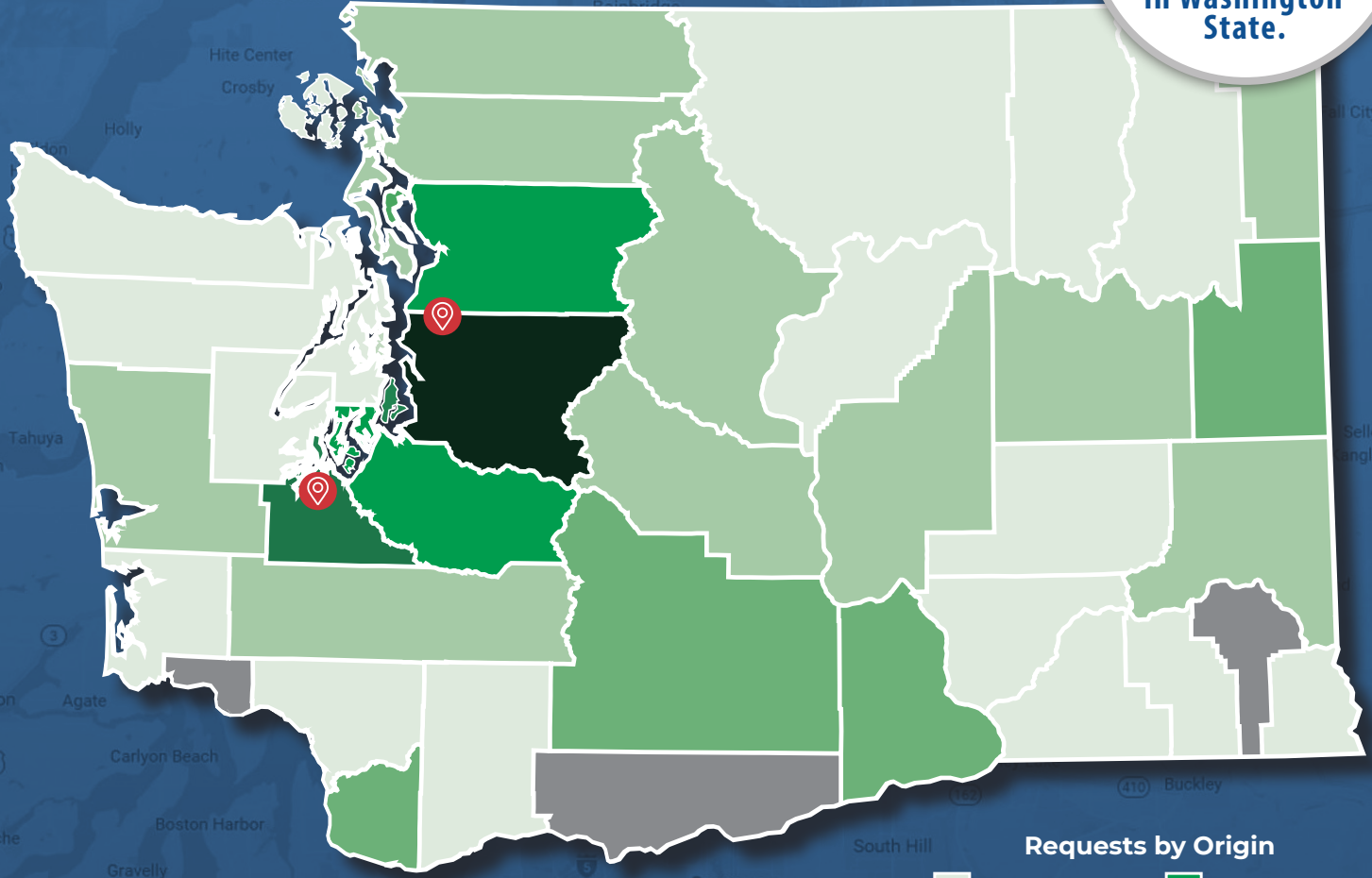
▶ Certification of Issues to Interest Arbitration

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

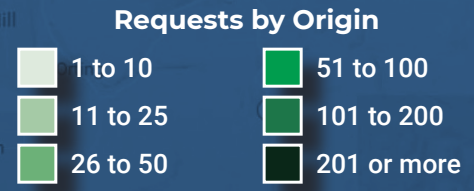


Requests by County

PERC has jurisdiction over **475,000** public employees in Washington State.



PERC Office Locations



* No requests from gray-shaded counties.

QUICK FACTS

30% of requests for services originated from **King County** alone.

12% of requests for services originated from **Thurston County**.

13% of requests originated from **Pierce and Shoshomish Counties** combined.

51% of counties had 10 or less requests; three counties had none.

- ▶ Of Washington's 39 counties, **King County** is the most populous and has the largest number of public employers and employees.
- ▶ State government is headquartered in **Thurston County**, and 83 percent of the cases filed from within Thurston County involved state agencies or state colleges.
- ▶ **Pend Oreille County** is the 33rd least populated county but had 17 cases filed in 2017.
- ▶ **Lincoln County** is the 35th least populated county but had 11 cases filed, 8 of which dealt with the county's open bargaining resolution.



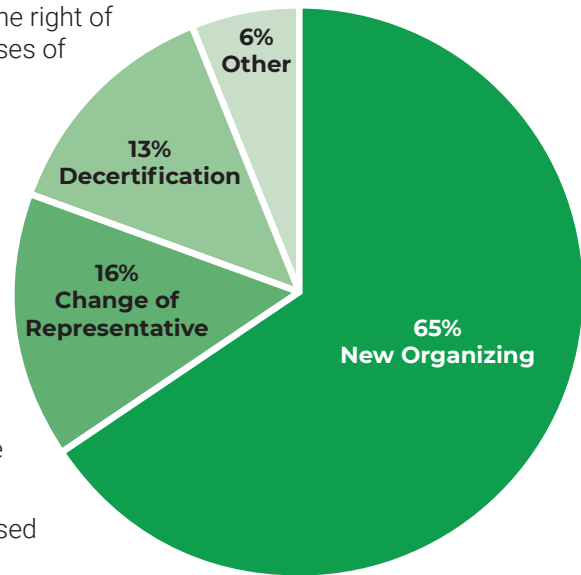
Representation

87 percent of eligible employees exercised their right to choose.

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.

There was a 62 percent increase in representation petitions between 2016 and 2017.

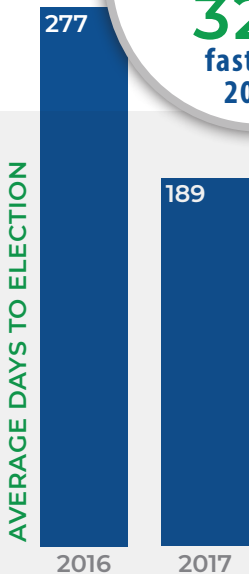
- ▶ Of the 141 petitions filed, 67 percent involved elections for new representation or to change or decertify a representative, and 33 percent involved the addition or removal of positions to or from an existing bargaining unit.
- ▶ The majority of election petitions sought to organize unrepresented employees; the employees chose to be represented in 90 percent of those cases.
- ▶ An average of 87 percent of eligible employees exercised their right to choose.



Elections in cases with contested issues occurred **32% faster in 2017.**

Time to Election Reduced in 2017

Following last year's annual report, PERC focused on reducing the time to process petitions so that public employees could more quickly exercise their right to choose whether to be represented. In 2017, PERC staff conducted 43 percent more elections or cross-checks than in 2016 but significantly reduced the time to elections or cross-checks in cases where contested issues required a hearing or delayed processing.



<u>2016</u>		<u>2017</u>
46	Elections or Cross-Checks Conducted	66
50	Average Days to Election in Cases Without Contested Issues	51
277	Average Days to Election in Cases With Contested Issues	189

Further reducing the time to election will continue to be a goal.



Conflict Prevention

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



Online Training Now Available!

In 2017, PERC launched a short, online training module focusing on the question, "What is Mediation?"

This training module is aimed at the increasing number of participants in PERC's mediation processes who have had no exposure to any mediation.

View the training on the website at perc.wa.gov/online-training.

In 2017, clientele requested 49 percent more conflict prevention services over the previous five years' average.

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

PERC's training offerings help parties

- ▶ improve labor-management relationships.
- ▶ expand their knowledge of collective bargaining laws and processes.
- ▶ learn and apply the interest-based bargaining process.
- ▶ learn and apply other collaborative bargaining techniques.

Custom training is also available to meet the varying needs of clientele.

The Affinity Model

The Affinity Model is an innovative training tool designed to help parties brainstorm and discuss economic or multipronged issues.

By using sticky notes to construct a zone of possible agreement, parties can collaboratively visualize the elements of a mutually acceptable solution.

Participants reported improved outcomes as a result of PERC's conflict prevention services:



"I feel that our officers have a better understanding of the dynamics of Labor/Management and now have some tools to help better communicate and to look at things in a different light."



The positive impact of a training was described as "transforming the relationship and creating a great process for the bargaining of [the parties'] second contract."

Mediation

Mediation continues to be one of PERC's most requested services.

Mediation requests regularly comprise the majority of cases filed. In 2017, mediation requests made up 41 percent of PERC's case intake.

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 agreements that result.

What did the 356 mediation requests received in 2017 involve?

50%

Collective Bargaining Agreements

PERC mediators help parties reach an agreement over the terms of a collective bargaining agreement.

26%

Grievances

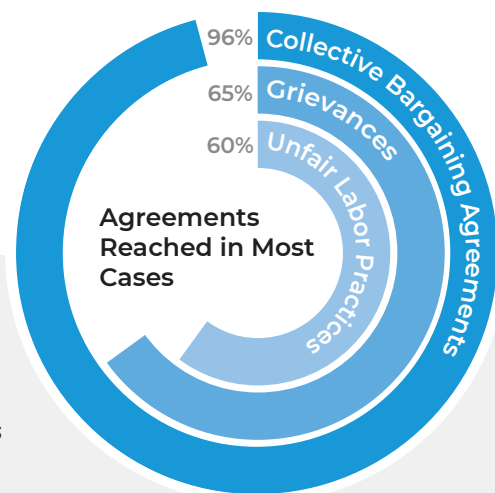
PERC mediators help parties reach an agreement when a dispute over the interpretation or application of a collective bargaining agreement arises.

24%

Unfair Labor Practice Complaints

PERC mediators help parties resolve unfair labor practice complaints.

Parties mutually reach agreement most of the time when they use PERC mediation services.



Strikes

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

After no strikes took place in 2016, two strikes occurred in 2017:

► **San Juan Island School District**

1-day strike involving certificated employees

► **Bellingham Technical College**

4-day strike involving classified staff

Neither employer sought a court order to stop the strikes, and agreements were reached in both cases following PERC's mediation efforts.

Adjudication

16% INCREASE
in requests for services between 2016 and 2017.

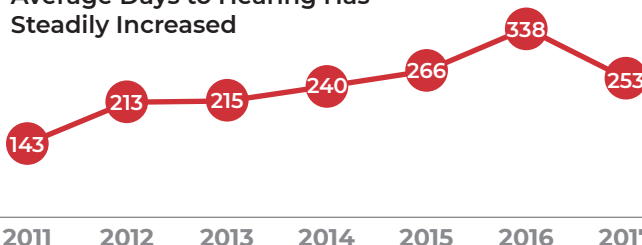
As recognized labor relations experts, PERC and its employees adjudicate unfair labor practice complaints, issues related to representation, and other various labor disputes.

Time to Hearing

The average number of days from filing to hearing in unfair labor practice cases has steadily increased from 2011 to 2017. Several legitimate reasons may include PERC staffing levels, turnover amongst advocates, or attempts to settle cases.

Although the time to hearing decreased somewhat in 2017, further examination is necessary to make sure hearings are not needlessly delayed.

Average Days to Hearing Has Steadily Increased



PERC Continues to Issue Timely Decisions

PERC continued to meet its goal to issue timely decisions. **In 2017, Labor Relations Adjudicators/Mediators continued to issue decisions within 90 days from the close of the record, while the Executive Director and the Commission issued decisions faster than in 2016:**

27% decrease in the average days to issue Executive Director decisions

41% decrease in the average days to issue Commission decisions

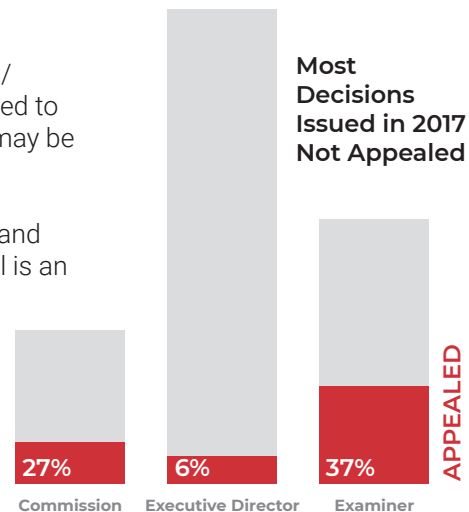
Since 2012, **82%** of Commission decisions have remained unchanged following appeal to court.

PERC Decisions on Review

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 makes every effort to issue sound decisions, and the volume of unchanged decisions at the court level is an indicator of PERC's success.

Since 2012, 82 percent of Commission decisions have remained unchanged following appeal to court. In 2017, three pending appeals were dismissed at the court level. Three Commission decisions were appealed to court in 2017 and are currently pending.





Key Decisions in 2017

Decisia and Lexbox make PERC decisions more easily accessible and searchable than ever before.



City of Everett (International Association of Fire Fighters, Local 46), Decision 12671-A (PECB, 2017)

The Commission and Washington State courts have held that “general staffing levels are fundamental prerogatives of management” and a minimum shift staffing clause is generally not considered a mandatory subject of bargaining. A union may overcome that presumption by showing a demonstratedly direct relationship between minimum shift staffing and employee safety and workload, which may tip the balance and render shift staffing a mandatory subject of bargaining.

In this case, the union and the employer disagreed whether the union’s request to increase the minimum shift staffing level was a mandatory subject of bargaining. The employer filed an unfair labor practice complaint. A hearing examiner found

for the employer on the basis that minimum shift staffing is a nonmandatory subject of bargaining.

The Commission concluded that the union submitted evidence demonstrating a direct relationship between minimum shift staffing and employee safety and workload. The demonstration of this direct relationship—coupled with the public’s interest in receiving assistance from firefighters that are not physically, emotionally, or psychologically fatigued—tipped the balance and rendered the issue a mandatory subject of bargaining.

This case is on appeal before the Washington State Court of Appeals.



State – Ecology, Decision 12732-A (PSRA, 2017)

The allegations in this case involved comments made in an employee performance evaluation, the employer’s investigation of the employee for use of work time, and corrective action against the employee. The union alleged that the employer’s actions all followed grievances filed by the employee or grievance meetings.

The examiner determined that no violation occurred. The Commission affirmed. The Commission noted that although Chapter 41.80 RCW protects an employee’s right to form, join, or assist a union, an employer still has the right to manage its operations and direct employees in their day-to-day activities.

The timing of an adverse action in relation to protected activity can support a finding of an interference violation but is not dispositive in every case.

In this case, the evidence revealed that the employer took steps to manage the employee before, during, and after he engaged in protected activity. Thus, the timing of the employer’s actions did not support a conclusion that the employer interfered with employee rights.

Key Decisions in 2017

Read the full decisions online at decisions.perc.wa.gov.

Snohomish County Fire District 1 (International Association of Fire Fighters, Local 1828), Decision 12669 (PECB, 2017)

The union's lead negotiator made statements and acted in such a manner that conveyed he had actual and apparent authority to enter into a binding agreement. The employer believed the union would sign the agreement if the employer agreed to the union's proposal. The employer agreed to the proposal and ratified the agreement. The union then refused to sign the agreement.

Based on these actions, the examiner found that the union bargained in bad faith. The negotiator

gave the employer a credible and reasonable belief that the union would sign the agreement if the employer agreed to the union's proposal.

The union was ordered to sign the agreement because the union would otherwise be rewarded for its unfair labor practice. This "make-sign" remedy also placed the parties in the same situation they would have been in had the union not unlawfully repudiated the agreement.

Bellevue School District, Decision 12767 (PECB, 2017)

High school football coaches employed by the Bellevue School District conducted an annual summer football camp for the district's student athletes. The school board annually approved student participation at the camp. At least one participating coach was paid by a third party for his participation at the camp because the coaches believed summer activities, including the football camp, were not district activities.

At the same time, the district had a policy prohibiting coaches from receiving third-party compensation for district coaching activities but had not previously enforced the policy with respect to the summer football camp. The district eventually applied the policy as well as rules of the state high school activity governing association to the coaches participating at the summer football camp and imposed a two-year ban for coaches who violated these policies.

The union alleged that the district created a new summer activities period and enforced the third-party compensation policy without bargaining.

The examiner found that the district did not create a new summer activities period because participation at the summer football camp required district approval.

The examiner also concluded that the district unlawfully enforced its third-party compensation policy and two-year ban for coaches who violated the policy. Although the policy had been adopted for several years, the district never took steps to enforce that policy for the summer activities period.

On the Horizon

ISSUES

- **Janus v. AFSCME, Council 31**
What impact to PERC will there be following the US Supreme Court decision involving the legality of union security clauses?
- **K-12 Funding Model**
How does implementation of the new K-12 funding model impact bargaining between school districts and teachers, and how will that impact PERC?
- **City of Everett**
An appeal of the Commission's decision involving minimum shift staffing in *City of Everett*, Decision 12671-A (PECB, 2017), is pending in the Washington State Court of Appeals.
- **Lincoln County**
The Commission's decision on appeals of an examiner order on unfair labor practice complaints involving Lincoln County's open bargaining resolution is expected in fall 2018.

INITIATIVES

- **Unfair Labor Practice Guidance Materials**
PERC is developing new content for its website to provide better guidance to parties filing unfair labor practice complaints.
- **Time to Election**
PERC will seek to improve the time to election in order to fulfill employees' right to choose whether to be represented for collective bargaining.
- **Time to Hearing**
PERC will conduct a more in-depth review of the time from the filing of an unfair labor practice complaint to hearing to ensure that hearings are not needlessly delayed.
- **Clientele Consultation Committee**
The Clientele Consultation Committee, which is comprised of members from labor and management, is a forum for dialogue, input, and feedback regarding PERC's services. Vacancies on the committee need to be filled following the transition of several members.



“Looking forward, we will seek to continuously improve our services and service delivery.”