



PERC

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

Annual Report for 2020





ANNUAL REPORT FOR 2020

Contents

Agency Overview	3
Milestones in 2020	4
Strategic Service Delivery	5
Representation	6
Mediation	7
Adjudication	8
Key Decisions in 2020	9
Conflict Prevention.....	12
On the Horizon.....	13

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Director's Message

I am pleased to present the Public Employment Relations Commission's Annual Report for 2020. As for everything and everyone, 2020 was dominated by the impact of the COVID-19 pandemic. Washington was one of the first states to see verified COVID-19 cases and, unfortunately, deaths. The first outbreak in Washington was at the Life Care Center in Kirkland, which is less than a mile from our Kirkland office. Staff in the Kirkland office began working completely remotely on March 8 and staff in our Olympia office on March 16. Our immediate focus was to ensure that we would be able to offer services and continue agency operations for what we, like everyone, believed or hoped would be a short-term experience. Over a year later, we continue to work completely remotely and provide all of our services virtually.



Those early efforts to ensure that we had the technological capacity and work processes to enable us to operate and provide services virtually continue to pay dividends today. I am extremely grateful and proud of how the staff came together, remotely, to not only figure out how to provide our services virtually but also to continually develop and improve on those virtual offerings. The feedback from clientele has been universally positive about the way we have provided our services virtually over the past year.

The pandemic certainly impacted the number of requests for services filed with PERC in 2020. Our case filings were their lowest since 2007. However, this decrease afforded us the time to hone our virtual services. While we all look forward to once again being able to engage in in-person activities, virtual services will continue to be part of our toolkit well beyond the pandemic.

Despite the overall drop in requests for services, some activity remained high. The amount of representation petitions filed in 2020 was above the previous five years' average, and PERC saw the highest number of bargaining units formed in several years. So, despite most workplaces operating remotely, employees were still able to organize.

This report reflects PERC's innovation, adaptability, and credibility in providing quality, unbiased, and expert labor relations and dispute resolution services—even in the face of unprecedented challenges.

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 Kenneth J. Pedersen 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. Seven staff members report directly to the Executive Director.

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

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, 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.



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.

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

Milestones in 2020

PERC Services All Virtual

Due to the COVID-19 pandemic, all PERC staff began working remotely in March 2020, and no in-person services have been offered since. Upon moving to remote and virtual work, PERC ensured that it had the technological capacity to conduct its services virtually. Staff then developed and honed their ability to deliver services virtually and created processes and best practices for those virtual services. Even when PERC resumes in-person activities, virtual services will continue to be a tool used by PERC in some instances.

PERC staff will be working remotely at least through June 2021. No in-person services will be conducted until further notice.

Totals for All Services and Internal and External Meetings Conducted Virtually Since March 2020

2,327
virtual sessions

1,305,730
minutes

15,231
participants

The Negotiation Project

A new conflict prevention offering was launched. The Negotiation Project bridges academic theory about conflict resolution with real-life labor relations in order to improve conflict resolution and prevention skills.



Content on PERC Website Continued to Be Improved to Better Serve Clientele

In 2020, PERC continued to make improvements to its website. New representation and election case guidance was made available to more clearly help public employees understand their rights and how to file petitions to organize or to change or remove a representative.

Additionally, the Conflict Prevention/ Training Pages were updated to better reflect the types of training that PERC offers, including The Negotiation Project.



Commissioner Mark Busto Reappointed

Mark Busto was reappointed to the Commission. Originally appointed in January 2017 to fill the remainder of Commissioner Tom McLane's term, Commissioner Busto's new term expires September 8, 2024.



Rules Review

PERC staff continued its work systematically reviewing and suggesting revisions to all agency rules and processes with the goal of simplifying, streamlining, and clarifying them. In 2020, PERC conducted six virtual meetings with clientele to discuss proposed rule changes and gather feedback.

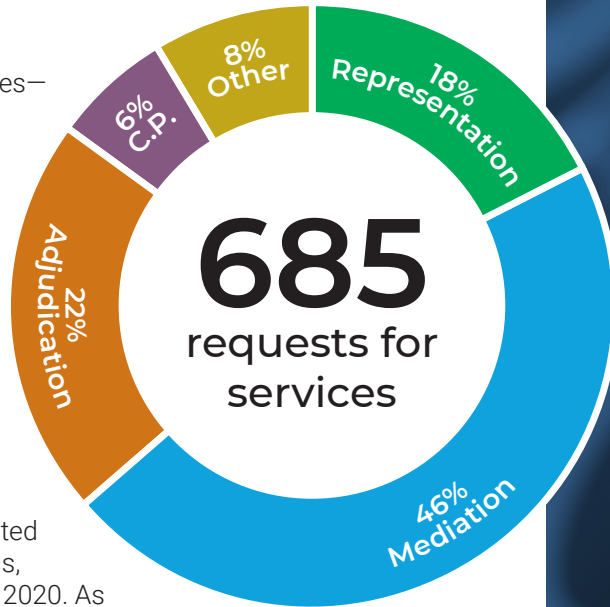
Strategic Service Delivery

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.

Looking Back at 2020

In 2020, parties made 685 requests for services—the lowest amount in any year since 2007, when 608 requests were filed. PERC typically receives an average of 800 requests annually. The COVID-19 pandemic definitely impacted the volume of requests in 2020. April and May saw the lowest number of cases filed in any month since December 2008. As parties settled into the routine of working remotely and virtually, the volume of requests for services increased, and in the last quarter of 2020, filings were on par with the monthly average in a typical year.

Using available technology, PERC has conducted all its services—including elections, mediations, hearings, and trainings—virtually since March 2020. As a result, PERC has continued to meet its mission.



KEY FACTS IN PERC'S STRATEGIC SERVICE DELIVERY



Representation

- ▶ 58 new bargaining units were created in 2020.



Mediation

- ▶ The overall number of mediation cases was similar to 2019 and comprised 46% of PERC's caseload.



Adjudication

- ▶ Examiner decisions were issued 37% faster.



Conflict Prevention

- ▶ 230 minutes of online, on-demand content was created.



Representation

Elections • Bargaining Unit Clarifications

While down 21% from the volume in 2019, the number of representation petitions exceeded the previous five years' average.



Mediation

Collective Bargaining Agreements • Grievances • Unfair Labor Practice Complaints

The number of requests to mediate collective bargaining agreements was the lowest ever.



Adjudication

Unfair Labor Practice Complaints • Grievance Arbitrations • Bargaining Unit Configurations

The number of unfair labor practice complaints filed fell slightly below the previous five years' average.



Conflict Prevention

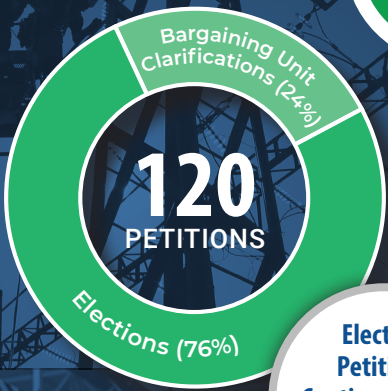
Training • Outreach • Facilitation • Online Resources

The number of requests for conflict prevention services was the lowest since 2013.

Other

Upon request, PERC provides parties with a randomly generated list of names from its panel of qualified private arbitrators. PERC also certifies to interest arbitration any issues remaining in dispute following mediation for employees under certain statutes.

QUICK FACTS



Election Petitions Continued to Be Mostly for New Organizing

Virtual Representation Proceedings

- Any necessary hearings on disputed issues were conducted virtually.
- PERC allowed parties to observe counts of election ballots virtually.
- More parties observed virtual counts than when allowed to attend in person because no travel to Olympia required.
- PERC will continue to allow parties to observe counts virtually after in-person activities resume.

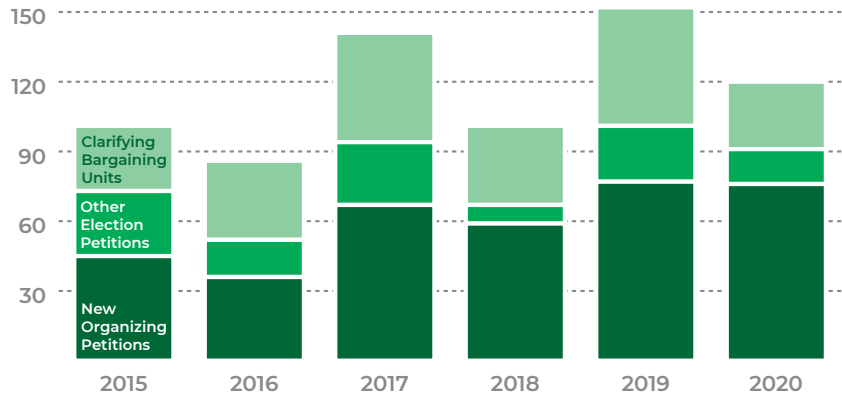
Elections guidance was updated and improved on PERC's website

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 continued to be strong in 2020. The number of representation petitions was down 21% in 2020 compared to 2019—which had the most petitions since 2008—but was still higher than the previous 5 years' average. The number of new organizing petitions was on par with 2019.

When workplaces shut down and people began working remotely, some employee organizations expressed concern about their ability to organize and collect authorization cards. However, PERC has always accepted scanned or electronic versions of authorization cards, enabling employees to continue to organize in 2020.



76
elections or elections by card check conducted

The most conducted in any year through at least 2015.

81%
of employees exercised their right to choose

Consistent with the previous five years' average of 85%.

58
bargaining units created through election

The most created in any year since PERC began capturing this data in 2016.

Time to Election Continued to Be Reduced

Reducing the time to election has been an ongoing goal in recent years. In 2020, the time to election continued to improve.

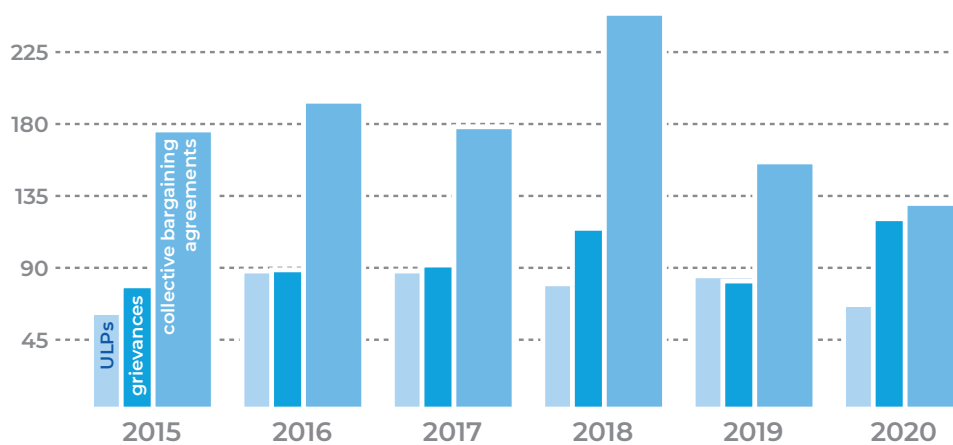


Elections in cases with contested issues occurred 60% faster than in 2016.

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.

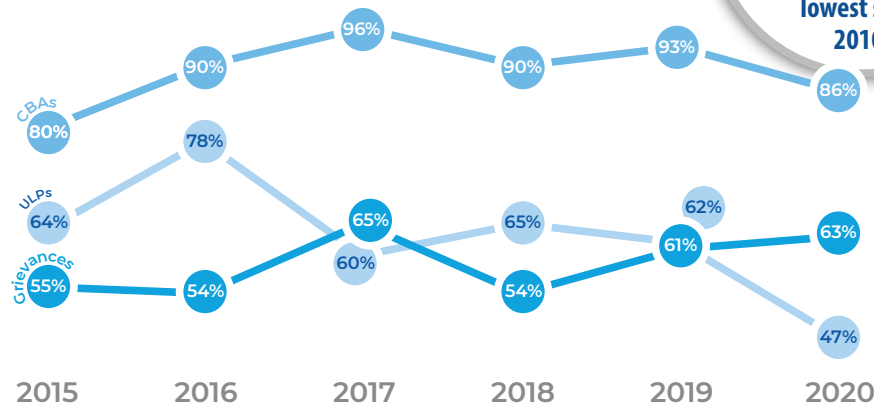
PERC conducts three types of mediations involving collective bargaining agreements, grievances, and unfair labor practice complaints. The overall number of mediation requests received in 2020 was similar to the volume in 2019, which was down from the previous 5 years' average. Yet, the nature of the mediation requests filed changed. **PERC received the fewest requests to mediate collective bargaining agreements since the agency's inception in 1976**, with requests to mediate grievances up 48% over 2019.



The uncertainty of the COVID-19 pandemic and its economic impact drove the lower number of requests to mediate collective bargaining agreements. Many parties with expiring collective bargaining agreements extended their current agreement for a year during the pandemic. The drastic changes to the workplace, level of work, and working conditions during the pandemic explain the increased number of grievances and grievance mediation requests.

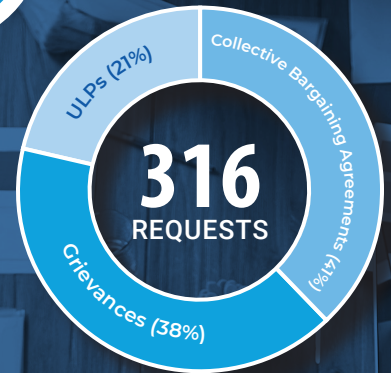
PERC Continued to Help Parties Reach Agreement

Agreements continued to be reached in most cases where PERC provided mediation services. However, there has been a shift in mediations of grievances and unfair labor practice complaints.



In 2020, the percentage of agreements reached in mediations involving unfair labor practice complaints was the lowest since 2010.

QUICK FACTS



Virtual Mediations

- ▶ PERC began conducting mediations virtually in April 2020.
- ▶ PERC developed protocols and best practices to ensure mediations are conducted effectively while still providing the confidentiality that is the hallmark of mediation.

K-12 Mediations and Strikes

K-12 mediation requests were down 66% from 2019 and 89% from the all-time high in 2018. No K-12 strikes occurred in 2020. There was one strike overall—a 3-day strike involving certificated employees at a community college.

QUICK FACTS



Adjudication

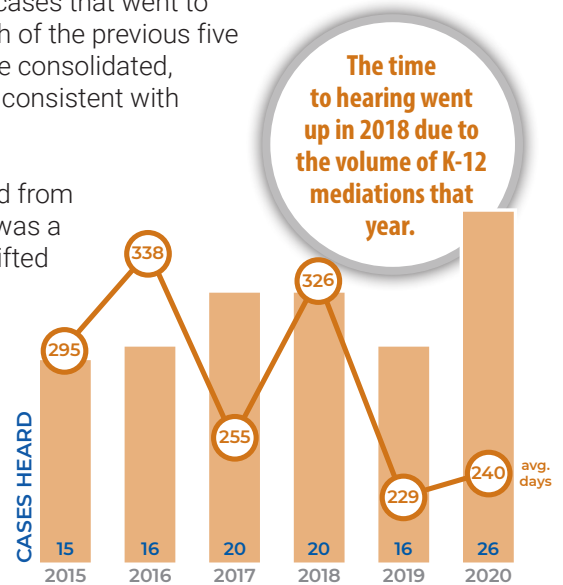
As recognized labor relations experts, PERC and its employees adjudicate unfair labor practice complaints, issues related to representation, and other various labor disputes.

Consistent with the pandemic's impact on the overall volume of cases, the number of unfair labor practice complaints filed in 2020 was the least in a single year since 1987 and down 29% from 2019.

Time to Hearing Rose Only Slightly in 2020 Despite Operating Completely Remotely

The number of unfair labor practice cases that went to hearing in 2020 was higher than each of the previous five years. Because several hearings were consolidated, the number of hearings opened was consistent with previous years.

The time to hearing slightly increased from 2019 due to the pandemic, as there was a definite initial pause while parties shifted to remote work or addressing other issues related to the pandemic. As it became clear that working remotely was going to be a longer-term reality and as parties became more comfortable with virtual proceedings, cases proceeded to hearing more expeditiously compared to the previous five years' average.



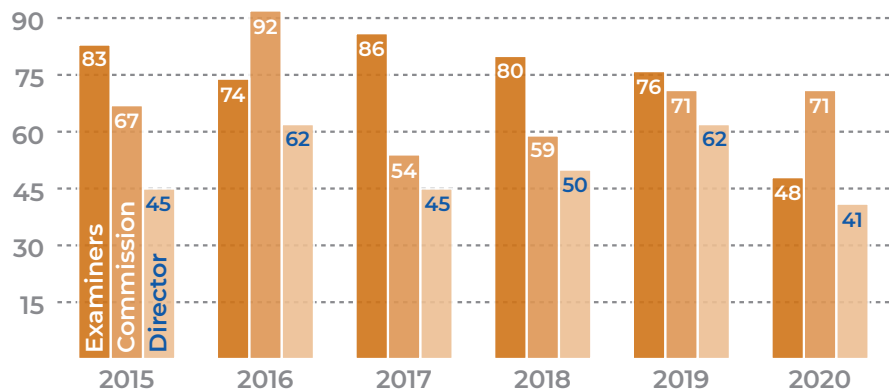
Virtual Adjudication

- ▶ PERC staff took the first few weeks of working remotely to develop best practices and protocols for virtual hearings. Staff also conducted mock hearings to become adept at them.
- ▶ Parties were initially hesitant to participate in virtual hearings and wanted to wait until in-person activities resumed.
- ▶ The first virtual hearing occurred in June, and 14 virtual hearings for 24 unfair labor practice cases ultimately occurred in 2020.
- ▶ Parties have responded positively about how PERC conducts virtual hearings.

Examiners use Dropbox to manage exhibits during virtual hearings.

Time to Decision

Adjudicative decisions continued to be issued timely and well below the 90-day statutory mark. Examiners issued 13 decisions, the fewest issued in a single year since 1976. However, they were issued within an average of 48 days, which is the quickest in any year within the 2011–20 period. The Commission issued 19 decisions within an average of 71 days.



Key Decisions in 2020

Teamsters Local 839 v. Benton County, 15 Wn. App. 2d 335 (2020)

The employer discovered an accounting software error that caused 85 bargaining unit employees to be overpaid. The employer notified the employees of the overpayment, the need to collect repayment, and the options for repayment. The union requested to bargain over how repayment would be made. The employer refused. The union filed an unfair labor practice complaint.

An Examiner and, on appeal, the Commission concluded that the employer committed an unfair labor practice and that the wage recovery statute, chapter 49.48 RCW, does not conflict with chapter 41.56 RCW. The

superior court affirmed, and the employer appealed to the Washington State Court of Appeals.

The court affirmed the Public Employment Relations Commission. In its opinion affirming the agency, the court held that nothing in chapter 49.48 RCW expressly permits a public employer to bypass its employees' exclusive bargaining representative. A public employer can provide its union member employees with the notice required by RCW 49.48.210(10) and then bargain with the union about repayment options.

Lincoln County v. Public Employment Relations Commission, 15 Wn. App. 2d 143 (2020), review denied, 2021 Wash. LEXIS 173 (Wash. Apr. 7, 2021).

Lincoln County (employer) enacted a resolution to conduct all collective bargaining negotiations in a manner that was open to the public. The employer and union began bargaining in a public session. At the next bargaining session, the union stated that it was willing to bargain but would do so in accordance with the parties' prior practice of bargaining in private. The employer responded that it was ready to bargain and would do so in accordance with its resolution. Both parties repeated their statements and the union left. Both parties then filed unfair labor practice complaints against the other.

First an Examiner and then the Commission on appeal found that both parties had unlawfully conditioned their willingness to engage in good-faith negotiations on a permissive subject—that is, how negotiations would be conducted. The Examiner had originally ordered to parties to bargain. The Commission modified the order, ordering

the parties to engage in good-faith negotiations. If the parties were unable to come to agreement on the manner of bargaining, the Commission ordered the parties to mediate. If the parties were unable to reach agreement after mediation, the Commission ordered a return to status quo—private bargaining.

Both parties ultimately appealed to superior court, which affirmed the Commission. The parties then appealed to the Court of Appeals. The Court of Appeals affirmed the Commission's determination that the parties had unlawfully conditioned bargaining on a permissive subject—the manner of negotiations. The court reversed the Commission's remedy, holding that a return to the status quo is not an appropriate remedy when parties are unable to agree on a permissive subject of bargaining.

On remand to the Commission.

Since 2012,
85%
of Commission
decisions have
remained unchanged
following appeal
to court.

After Decrease in Appeals in 2019, Fewer Decisions Continued to Be Appealed in 2020

- ▶ Compared to 63% in 2018 and 41% in 2019, 38% of Examiner decisions were appealed to the Commission.
- ▶ Compared to 35% in 2018 and 20% in 2019, 21% of Commission decisions issued in 2020 were appealed to court.
- ▶ Four court appeals of Commission decisions issued in 2020 are pending.



Shoreline Community College, Decision 12973-A (CCOL, 2020)

The union filed an unfair labor practice complaint alleging that the employer had bargained in bad faith regarding compensation, failed to provide information, and unilaterally changed the amount of compensation. The employer asserted that it had complied with the terms of the collective bargaining agreement and that the matter should be deferred to arbitration. The Examiner denied deferral to arbitration.

WAC 391-45-110 sets forth when the Public Employment Relations Commission may defer to arbitration. Among the requirements is that allegations involve a unilateral change violation. Historically, the agency has not deferred other statutory violation claims, including claims involving bad-faith bargaining and refusal to provide information. The agency has also historically refused to bifurcate claims and defer the unilateral change claim while adjudicating the other.

On appeal, the Commission reversed the Examiner. The Commission concluded that the parties did have a meeting of

the minds. The Commission then ruled that the entire matter should have been deferred to arbitration consistent with the legislative policy favoring arbitration as a means of resolving disputes over the application of an existing collective bargaining agreement.

The Commission deferred the bargaining in bad faith claim because it had stemmed from the same facts as the unilateral change violation claim and it depended on the same interpretation of the collective bargaining agreement. The Commission also deferred the failure to provide information claim because there was contractual language setting forth the employer's obligation to provide information to the union.

Commissioner Sayan dissented on the grounds that deferral is not consistent with WAC 391-45-110 or long-standing agency practice.

This case is currently on appeal before the Court of Appeals.



Whatcom County, Decision 13082-A (PECB, 2020)

In 2017, the legislature enacted the Paid Family Medical Leave Act (PFMLA), which provides eligible employees with compensation for qualifying medical or family events. Employers were not required to begin reporting premiums until January 2019. The Washington State Employment Security Department began assessing a premium for each employee on January 1, 2019. The PFMLA went into effect on October 17, 2019.

The parties' collective bargaining agreement did not address PFMLA premiums. The employer notified employees that it intended to deduct the employee portion from employee wages beginning in January 2019. The parties subsequently met to negotiate

other matters and discussed the PFMLA premiums but did not reach agreement.

The union filed an unfair labor practice complaint and an Examiner dismissed the complaint, concluding that the legislation had created a new status quo.

On appeal, the Commission reversed the Examiner, concluding that the enactment of the PFMLA did not create a new status quo. A change to the law does not alter the status quo absent an unambiguous legislative directive. The legislature provided employers with several options to deal with the PFMLA premiums, including paying the entirety of the premium.

 **Washington State Ferries (Marine Engineers' Beneficial Association), Decision 13027-A (MRNE, 2020)**

In 2010, the legislature changed the manner for bargaining health care benefits for employees of Washington State Ferries.

Prior to 2010, the statute allowed Ferries to bargain directly with unions for health care benefits for employees. Pursuant to that, the parties had a long-standing provision in their collective bargaining agreement that required the employer to pay a premium contribution to a Taft-Hartley medical plan for Temporary Relief Engineers.

The 2010 amendments provided, in part, that the state and one coalition of all the exclusive bargaining representatives subject to chapter 47.64 RCW and the state employees collective bargaining law shall conduct negotiations regarding the dollar amount expended on behalf of each employee for health care benefits.

In the 2018 contract negotiations, the union sought to increase the amount

of the employer's contribution and ultimately pursued the matter to interest arbitration. The employer filed an unfair labor practice complaint asserting that RCW 47.64.270 precluded the bargaining of health care.

The Commission held that the 2010 amendments did not render premium contributions for Temporary Relief Engineers a nonmandatory subject of bargaining. The amendments say nothing about the health care plans to which those agreed dollar amounts might eventually be directed, nor the "health care benefits" such plans might offer.

Commissioner Busto dissented, concluding that the 2010 amendments did expressly remove the parties' ability to bargain for health care benefits other than those provided by the Washington State Health Care Authority.

 **University of Washington, Decision 13149-A (PECB, 2020)**

RCW 41.56.021 grants collective bargaining rights to employees of institutions of higher education who have been exempted from the state civil service law and the state employees collective bargaining law. RCW 41.56.021 excludes from this grant of collective bargaining rights employees performing certain categories of duties.

This case involved the first application of the exclusion for managers with substantial responsibility for public information. The employer sought to exclude Engagement Officers and Media Relations Officers from a newly formed bargaining unit at the employer's Institute for Health Metrics and Evaluation (IHME).

In order to be a manager with substantial responsibility for public information, an employee must have substantial responsibility for public and media relations and communications

similar to a public information officer or a press secretary.

The Engagement Officers do not have substantial responsibility for public information. The Engagement Officers independently develop and manage relationships with a wide variety of collaborators, including foreign, state, and local governments, multilateral organizations, health care delivery agencies, nonprofit organizations, and academic researchers and research institutions.

The Media Relations Officer does have substantial responsibility for public information. The Media Relations Officer develops and fosters relationships with various media channels to distribute IHME findings to a variety of audiences. The Media Relations Officer plays a role in the development and implementation of the IHME communication plan.

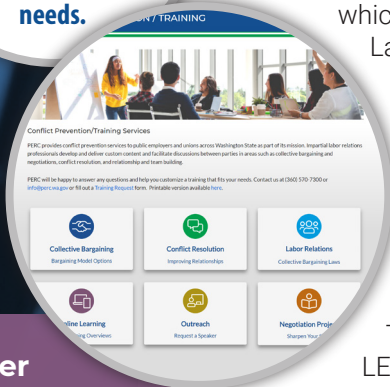
Read the full decisions online at decisions.perc.wa.gov

QUICK FACTS

43
REQUESTS



PERC allows parties to request any combination of its training offerings, as well as custom training to fit the parties' needs.



More and Better Training Content Made Available on PERC's Website in 2020

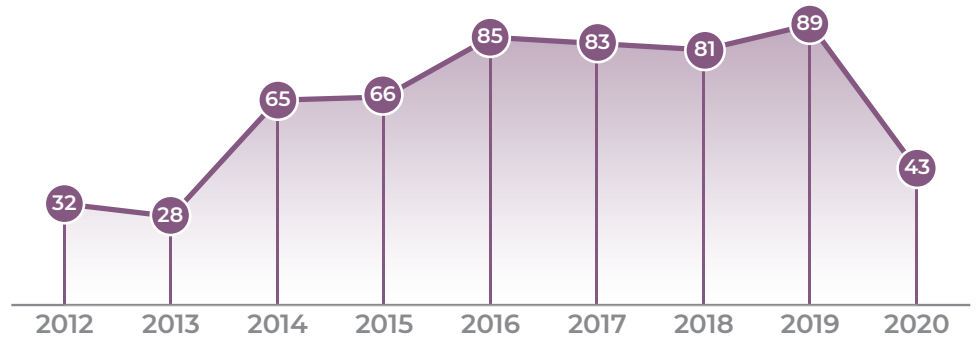
Conflict Prevention



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

Of all of PERC's services, its conflict prevention services were most impacted by the pandemic. **PERC received 52% fewer requests for conflict prevention services than in 2019 and the lowest number of requests since 2013.** It was not surprising that requests for these services decreased the most, as parties adjusted to new working arrangements and tried to deal with issues related to the pandemic first.

The volume of requests for conflict prevention services began to pick up in June, with 63% of the requests received in 2020 coming thereafter.



Use of Virtual Tools to Improve and Expand Conflict Prevention/Training Offerings

PERC took advantage of the initial lull in the volume of requests to bolster the training content and conflict prevention information available on its website, which included the addition of two new online, on-demand offerings on Labor Management Committees.

PERC also launched a new conflict prevention training offering in 2020: The Negotiation Project. This innovative conflict prevention program explores how academic theories and research about negotiation apply in Washington State public sector labor relations. Through online and eventually in-person discussions, negotiators can improve their skills and better manage conflicts.

The Negotiation Project was initially going to be unveiled at the 2020 LERA conference, and plans were underway to conduct the first session in an in-person, three-day format in June. With PERC having to pivot to all remote and virtual services, PERC staff reworked the format to be a combination of online, on-demand videos and interactive Zoom sessions.

25
on-demand learning videos now available

230
minutes of on-demand content created

150%
increase in webpage visits after addition of content

On the Horizon

ISSUES

→ Lincoln County

In *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143 (2020), the Court of Appeals remanded back to the Commission to determine an appropriate remedy on both parties' violations for conditioning bargaining on whether bargaining would occur in public or in private.

→ Shoreline Community College

An appeal of the Commission's decision regarding deferral to arbitration in *Shoreline Community College*, Decision 12973-A (CCOL, 2020), is pending in the Washington State Court of Appeals.

→ Direct Appeals to Court of Appeals

Senate Bill 5225 allows parties to appeal agency decisions directly to the court of appeals, bypassing the superior court, for the next five years. This may lead to more appeals to the court of appeals and in turn result in more published court decisions regarding PERC decisions.

INITIATIVES

→ Eventual Return from Remote Work and All Virtual Services

PERC will develop a plan for eventual return from remote work and resumption of in-person services.

→ Rules Process

PERC will review feedback from clientele on proposed rules and finalize proposed rule revisions for consideration by the Commission.

→ E-Filing

PERC will finalize testing of an e-filing component that is integrated with the agency's case management system and launch for use by clientele.

→ Implement Law Enforcement Grievance Arbitration Roster

PERC will implement Senate Bill 5055, which requires PERC to create a roster of 9 to 18 arbitrators that will hear law enforcement grievance arbitrations and to develop training for those appointed to the roster.

PERC and its staff have demonstrated their commitment and adaptability in credibly administering the state's collective bargaining laws, no matter the ever-changing circumstances.