



# PERC

PUBLIC EMPLOYMENT  
RELATIONS COMMISSION

## Annual Report for 2021






## ANNUAL REPORT FOR 2021

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# Director's Message

I am pleased to present the Public Employment Relations Commission's Annual Report for 2021. Like you, PERC continued to be impacted throughout 2021 by the ongoing COVID-19 pandemic.



PERC continued to operate remotely and offer all services virtually. All of our available data shows no discernable differences in the efficacy of these virtual offerings.

Mediation cases remained open and resulted in agreement at a rate consistent with prior years. Adjudication cases went to hearing at about the same rate as usual, and agency decisions were issued within the target time frames. Representation activity continued to be high, with the most bargaining units created in a single year since we started capturing this data.

That is not to say there was no impact from the pandemic. The average number of days to hearing rose again from the 2019 low, with most of that increase being due to two cases where the parties waited to see if in-person services would resume before eventually going to hearing virtually. Also, requests for conflict prevention and training services were still far off the pace from a few years earlier.

While the volume of conflict prevention services remained down, PERC staff continued to work on new innovative offerings outside of the traditional training setting. In 2020, we launched the Negotiation Project, which explores how academic theories and research about negotiation apply in Washington State public sector labor relations. Originally consisting of a series of video discussions, the Negotiation Project expanded in 2021 to offer monthly lunchtime Zoom sessions where negotiators and PERC staff could continue to discuss negotiation theory and decision-making at the bargaining table. Also in 2021, we began developing the next feature of the Negotiation Project—the PERColator Podcast—which launched in early 2022.

I completed my tenth year as Executive Director in 2021. In light of this, the report will, where possible, look at case data and trends over the last 10 years.

I am continually grateful for the commitment, adaptability, and skill of all our staff. These skills have not only allowed PERC to adapt in order to continue to provide high quality services throughout the pandemic but have also positioned PERC to be ready to adapt and innovate in response to whatever challenges lie ahead.

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. Eight 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

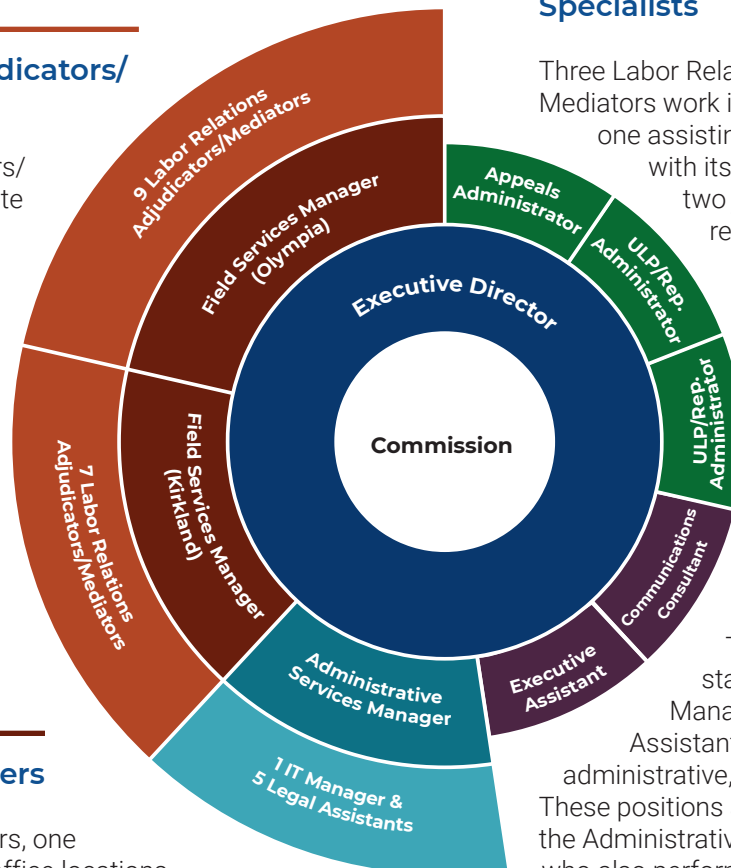
## Labor Relations Adjudicators/Mediators

Labor Relations Adjudicators/Mediators are classified state employees cross-trained to conduct both mediations and adjudications 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 <http://fiscal.wa.gov/salaries.aspx>.



## 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.

# Milestones in 2021

**PERC continued to provide all services virtually and remotely.**

## PERC Copresented First Virtual LERA Conference

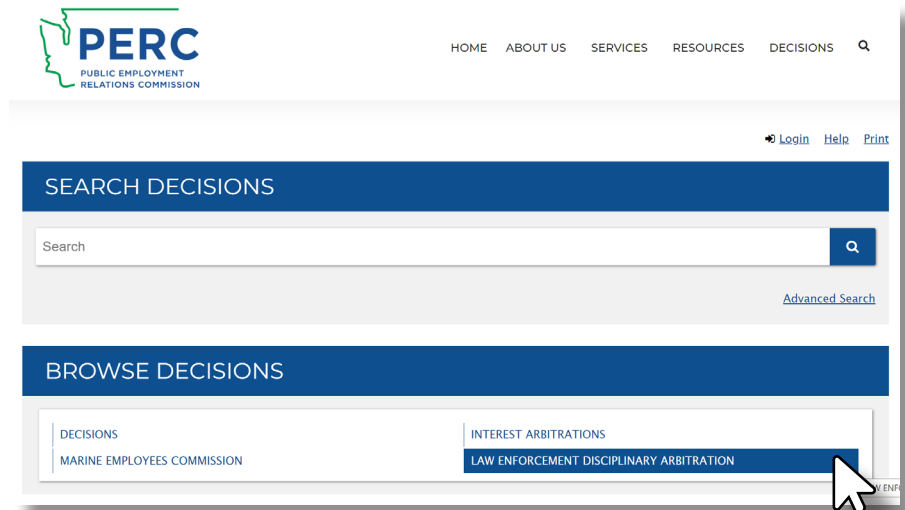
In April 2021, PERC again copresented the Labor and Employment Relations Association conference. For the first time, this conference was held virtually and attracted over 540 attendees.

## New Law Enforcement Arbitrator Roster

In the 2021 legislative session, the legislature passed Senate Bill 5055—now RCW 41.58.070—which requires PERC to create and maintain a roster of 9 to 18 arbitrators to conduct disciplinary grievance arbitration for law enforcement personnel. The law also requires PERC to develop training on racism, implicit bias, cultural diversity, and the daily experiences of a law enforcement officer to be taken by appointees to the roster.

PERC solicited applications for appointment to the roster and, in September 2021, the Commission appointed 18 arbitrators to the roster.

Any arbitration decision issued under this statutory process will be posted on PERC's decision website, with the names of the grievant and witnesses redacted.

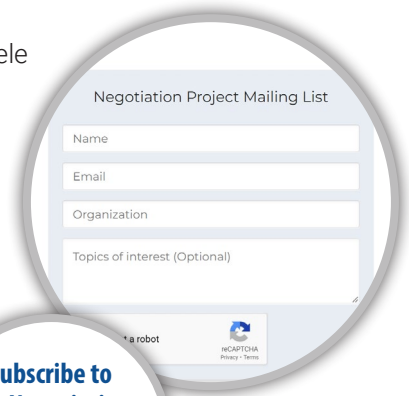


## Rules Review

PERC completed its review of feedback from clientele on proposed rule changes. Proposed rule changes were then shared with the Commission for its input, discussion, and feedback.

## The Negotiation Project

In addition to the on-demand video series, the Negotiation Project started hosting monthly Zoom sessions for people interested in discussing negotiation theory and decision making.



**Subscribe to the Negotiation Project mailing list to stay in the loop!**

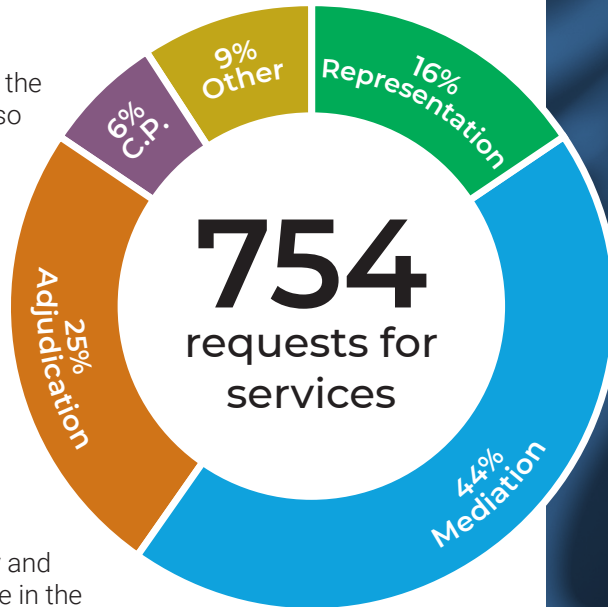
# Strategic Service Delivery

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 2021

The COVID-19 pandemic continued to impact the volume of case filings in 2021, although less so than in 2020. In 2020, PERC had the lowest number of requests to mediate collective bargaining agreements in the agency's history, the lowest number of unfair labor practice complaints since 1987, and the lowest number of conflict prevention service requests since 2014. In 2021, there was a nearly across-the-board increase in all of our case types, but requests for mediation of collective bargaining agreements and for conflict prevention services continued to lag.

PERC still provided all of its services remotely and virtually in 2021 with no discernable difference in the efficacy of those services.



**754**  
requests for services

### Representation Elections • Bargaining Unit Clarifications

The number of representation petitions was on par with the 10-year average.

### Mediation Collective Bargaining Agreements • Grievances • Unfair Labor Practice Complaints

Requests for grievance mediation services remained high. The volume of requests for those services was the second highest in 10 years.

### Adjudication Unfair Labor Practice Complaints • Grievance Arbitrations • Bargaining Unit Configurations

The number of adjudication requests rose 26% from 2020 but was still below the 10-year average.

### Conflict Prevention Training • Outreach • Facilitation • Online Resources

Requests for conflict prevention services continued to be the most impacted by the pandemic. The 47 requests received in 2021 was below the 10-year average.

### 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.

## KEY FACTS IN PERC'S STRATEGIC SERVICE DELIVERY



### Representation

- ▶ 68 new bargaining units were created in 2021.



### Mediation

- ▶ The number of requests to mediate collective bargaining agreements from the K-12 sector was the second highest since 1995.



### Adjudication

- ▶ The average time from filing to hearing rose by 48 days in 2021.



### Conflict Prevention

- ▶ Service offerings increased with the introduction of monthly Zoom sessions as part of the Negotiation Project.

# LOOK BACK



## 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, particularly new organizing, remained steady. The 68 bargaining units created in 2021 was the most in any year since PERC began capturing that data in 2016.

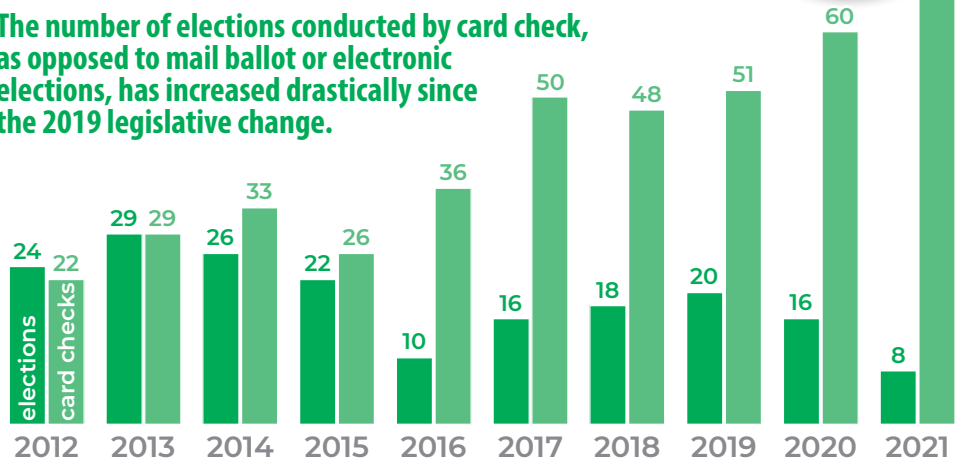
### Impact of 2019 Change to Card Check Law

Legislation in 2019 set a new threshold for an election by card check when a representation petition is supported by more than 50% of the petitioned-for employees. The prior threshold was 70%.

Employees may withdraw their cards from use in a card check.

If the number of cards drops below 50%, a mail ballot election will be conducted.

The number of elections conducted by card check, as opposed to mail ballot or electronic elections, has increased drastically since the 2019 legislative change.



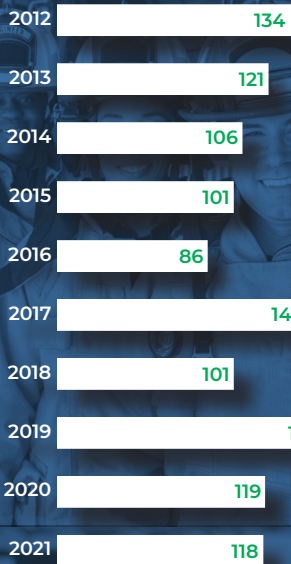
Card check is not allowed for a change of representation or decertification proceeding. Card check is also not authorized for community college faculty, teachers, four-year college faculty, individual providers, family child care providers, adult family home providers, and language access providers.

### Time to Election Continued to Be a Priority

For the first time in three years there was an increase in the time to election in cases without contested issues. Most of that increase was attributable to three cases that required a hearing and decision to resolve the contested issues before an election.



### Cases Filed by Year



An average of **82%** of employees exercised their right to choose in 2021.

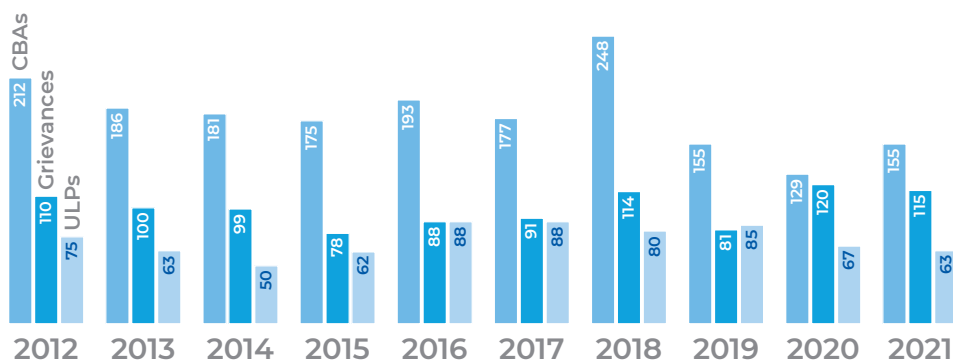
**68** bargaining units created through election.

# 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 (CBAs), grievances, and unfair labor practice complaints (ULPs). Overall, mediation requests rebounded closer to the 10-year average. The number of grievance mediation requests was the second highest in 10 years and largely drove that rebound. A significant number of those grievance mediation requests were related to vaccine mandates.

Mediation requests for CBAs and ULPs continued to lag. However, there was a 250% increase in requests to mediate CBAs from the K-12 sector between 2020 and 2021.

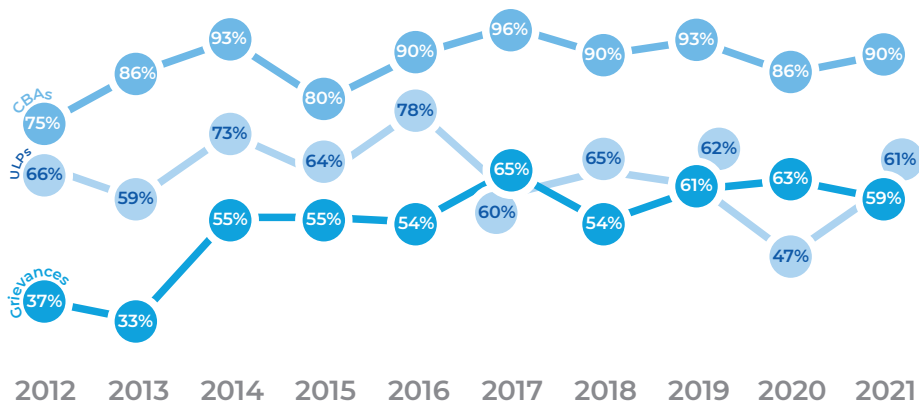


## Agreements Reached

Agreements were reached in all types of mediations at the historical average despite continuing to conduct all services virtually.

Despite PERC continuing to operate completely virtually, parties reached agreement at roughly the same rate as pre-pandemic, when all meetings were in person.

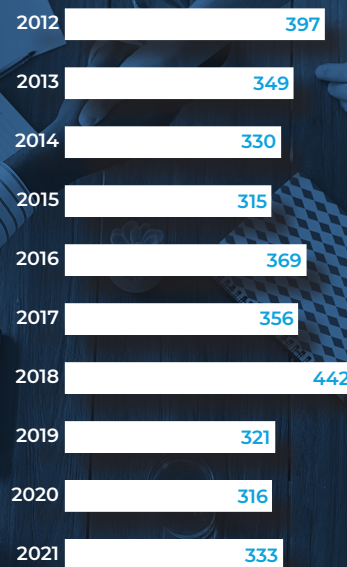
Mediation of grievances, which are disputes over the interpretation or application of a collective bargaining agreement, have consistently averaged from one quarter to one third of the mediation cases filed with PERC since 2012. Approximately 60% of these cases are closed with the parties reaching agreement, which prevents a costly arbitration that dictates the final decision.



## LOOK BACK



## Cases Filed by Year



10% of CBA mediation requests



20% of grievance mediation requests were related to vaccine mandates.

# LOOK BACK



# Adjudication

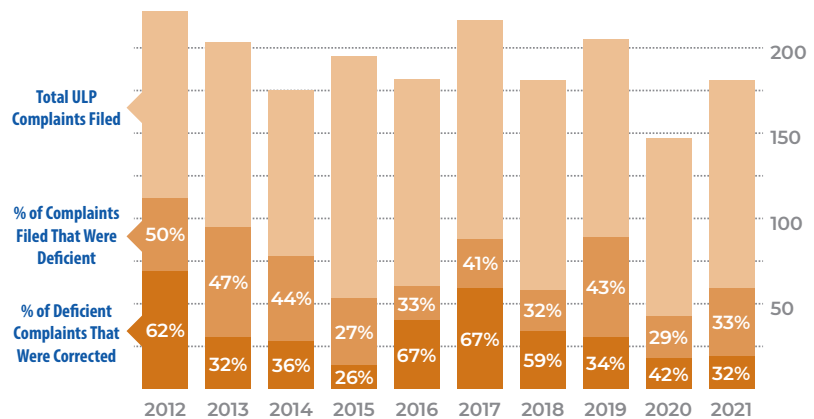
As recognized labor relations experts, PERC and its employees adjudicate unfair labor practice complaints, issues related to representation, and other various labor disputes.



Adjudication requests increased in 2021 from 2020, which had the lowest number of unfair labor practice (ULP) complaints filed since 1987. The number of adjudication cases filed in 2021 was close to the previous five years' average.

## Parties Are Filing Fewer Deficient Complaints

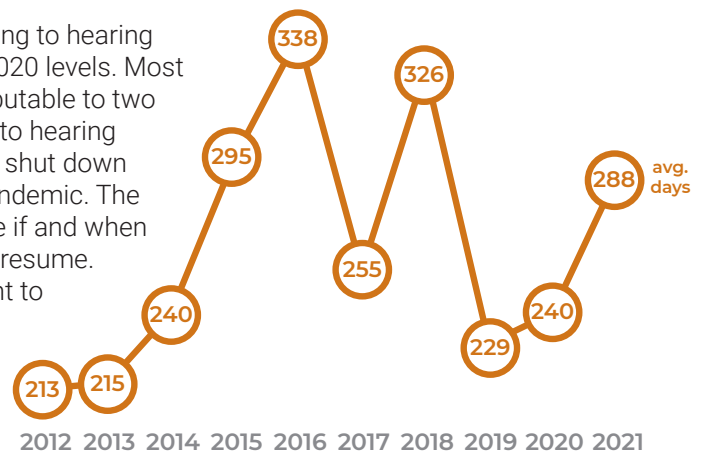
In 2018, PERC published new guidance material to assist parties in filing more complete complaints and reducing the number of deficient complaints, or those that fail to state a cause of action for further processing. Complaints identified as deficient cause twice as much work for agency staff, who issue deficiency notices and review any amended complaints.



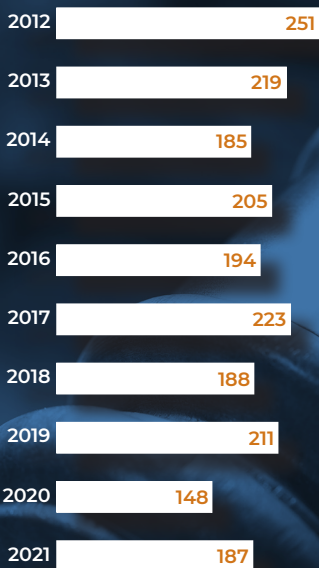
In the last two years, the percent of complaints receiving deficiency notices has dropped. Equally important is that only 32% of the deficient complaints received in 2021 were able to be corrected. This means **more complaints that stated a cause of action were filed correctly the first time**—eliminating additional work by PERC staff as well as the complainants.

## Time to Hearing

The average days from filing to hearing rose from the 2019 and 2020 levels. Most of that increase was attributable to two cases that were set to go to hearing right when PERC's offices shut down at the beginning of the pandemic. The parties waited to schedule if and when in-person hearings would resume. Eventually, the matter went to hearing virtually in 2021.



### Cases Filed by Year



**10%**  
of ULP complaints  
were related to  
vaccine mandates.



# Key Decisions in 2021

## **American Federation of Teachers, Local 1950 v. Public Employment Relations Commission, 18 Wn. App. 914 (2021)**

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.

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 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.

On appeal, the Court of Appeals ruled that the Commission did not act arbitrarily and capriciously in deferring the statutory claims. The court held that the Commission has jurisdiction to adjudicate all unfair labor practice claims, whether statutory or contractual, but RCW 41.58.020(4) expresses the preference for arbitration as a means of resolving disputes over the application of an existing collective bargaining agreement. The Commission has broad discretion to determine when deferral is appropriate. Finally, the court held that WAC 391-45-110 does not limit deferral of contractual disputes to only unilateral change allegations.

## **Kitsap County, Decision 13306-A (PECB, 2021)**

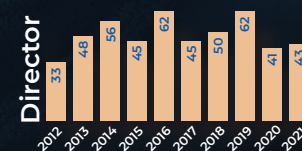
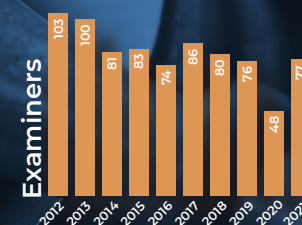
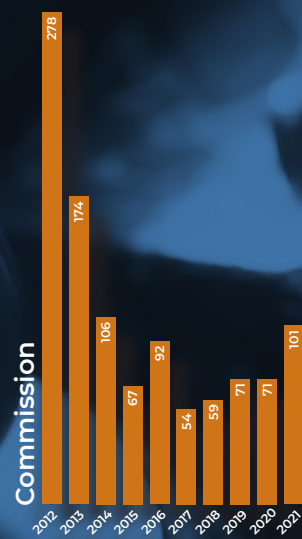
Since 1979, RCW 41.14.060(7) and RCW 41.14.130 have provided that when filling vacancies within the classified service, a county civil service commission shall certify to the appointing authority the names of the three persons highest on the eligibility list for the job class. The employer codified this statutory requirement in its civil service commission rules. In 2020, the legislature changed the statutory "Rule of Three" to a "Rule of Five." The union filed an unfair labor practice complaint when the employer refused to bargain the change of its civil service commission rule from a rule of three

to a rule of five in order to comply with the 2020 legislative change to RCW 41.14.060(7).

The unfair labor practice complaint was denied, both by an Examiner and the Commission on appeal. Any bargaining must be done within the bounds of substantive authority granted elsewhere. In RCW 41.14.060(7) the legislature removed the authority of the employer to bargain with respect to the number of candidates certified by the civil service commission for sheriff's office vacancies.

## Time to Decision

Since 2012, PERC has consistently emphasized issuing decisions in a timely fashion. Examiner and Executive Director decisions were issued well within the statutory deadline of 90 days from the close of the record. In 2021, the average time to issue Commission decisions exceeded 90 days for the first time since 2016.



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



**Lincoln County (Teamsters Local 690), Decision 12844-B (PECB, 2021)**

Lincoln County enacted a resolution to conduct all collective bargaining negotiations in a manner that was open to the public. Both parties eventually conditioned their willingness to bargain upon whether the bargaining would be conducted in public or in private, and both filed unfair labor practice complaints.

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 the 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.

In 2020, the Court of Appeals affirmed the Commission’s decision that each party had committed an unfair labor practice when they conditioned bargaining on whether it would be conducted in public or in private. The court held that a status quo remedy is inappropriate when parties condition bargaining on a permissive subject and remanded the matter to the Commission to impose a new remedy.

On remand, the Commission held that the appropriate remedy was to require the parties to cease and desist from insisting on a permissive subject of bargaining as a condition of negotiating mandatory subjects of bargaining; bargain in good faith; post the notice; and read the notice at a meeting of the parties’ governing bodies.



**City of Bellingham (Washington State Council of County and City Employees), Decision 13299-A (PECB, 2021)**

The employees changed their exclusive bargaining representative. After the election, the president of the former exclusive bargaining representative sent a letter to bargaining unit employees which referred to the new exclusive bargaining representative as a “minority representative” for allegedly failing to achieve a majority from all bargaining unit employees (the new bargaining representative received 74% of votes cast and had the support of 50% of the bargaining unit employees).

The letter also stated that the employees could still maintain their membership in the former incumbent union, that the union would be available to assist with any workplace issues, and that exactly one year from the certification the employees could return to the union. The new certified exclusive bargaining representative filed an unfair labor practice complaint against the former representative.

The Examiner concluded that the letter unlawfully interfered with employee rights through its coercive effect of impairing the employees to deal with their designated representative. The letter had the effect of creating questions about the legitimacy of the new exclusive bargaining representative.

The Commission reversed the Examiner, holding that to establish union interference, a complainant must establish the existence of “union tactics involving violence, intimidation and reprisals.” The Commission concluded that the statements of the former bargaining representative, outside the election context, did not express any threats involving violence, intimidation, or reprisals and did not constitute interference.

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

# Conflict Prevention

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



## LOOK BACK

**47**  
REQUESTS  
IN 2021

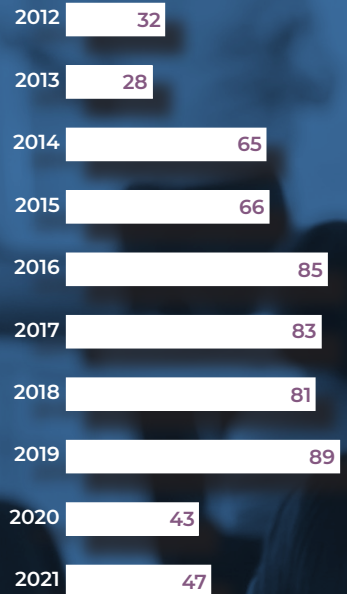
The number of requests for conflict prevention services remained low in 2021. This was largely attributable to both PERC and many agencies continuing to work virtually. While PERC can deliver all of its conflict prevention services virtually, many parties seeking collaborative bargaining modules want to wait until those services can be offered in person.

### PERC Continues to Develop and Expand Training Content

Over the last 10 years, PERC has continued to develop and expand its training offerings and content, utilizing technology to provide training in different ways.




### Cases Filed by Year



Although requests for conflict prevention services are down, our reach is broader than it's ever been.

View all of our training offerings and online learning modules at [perc.wa.gov/training](http://perc.wa.gov/training).



**Throughout the pandemic, PERC staff developed new tools and resources that ensured PERC would continue offering its core services and credibly administering the state's collective bargaining laws. These tools and resources will serve PERC and its clientele as we move forward from the pandemic.**

# On the Horizon

## ISSUES

### → Ben Franklin Transit

The Commission's decision on appeals of an Examiner order on unfair labor practice complaints involving bargaining conduct is expected in 2022.

### → Legislative Staff Bargaining

Legislation passed in 2022 grants legislative employees the right to collective bargaining beginning in 2024.

## INITIATIVES

### → Rules Process

PERC will finalize proposed rules revisions for consideration by the Commission and begin the formal rule-making process.

### → 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.

### → PERColator Podcast

PERC will launch a new venture in the Negotiation Project—the PERColator Podcast. The podcast is the latest effort to connect negotiation theory with negotiation practice.

### → Strategic Plan

PERC will begin formulating its 2023–2025 Strategic Plan and set goals to continuously improve PERC's services and service delivery.

### → E-Filing

PERC will complete testing of an e-filing component that is integrated with the agency's case management system and launch for use by clientele by the end of 2022.