

STRATEGIC PLAN

of the

PUBLIC EMPLOYMENT RELATIONS COMMISSION (Agency 275)

AGENCY MISSION

The Public Employment Relations Commission (PERC) is a general government agency of the state of Washington. The mission of PERC is:

**To prevent or minimize disruptions to public services, by the
“uniform and impartial ... efficient and expert” resolution of labor-
management disputes.**

RCW 41.58.005 (1). PERC was created by statute in 1975, to consolidate the administration of several state collective bargaining laws. PERC commenced operations in 1976, and its jurisdiction has been expanded by several subsequent legislative and judicial actions.

PRIORITIES OF GOVERNMENT

Primary: Improve the ability of state government to achieve results efficiently and effectively.

Secondary: Improve student achievement in elementary, middle and high schools
Improve the value of postsecondary learning
Improve the economic vitality of businesses and individuals
Improve the safety of people and property

STATUTORY REFERENCES

The state statutes administered by PERC are patterned, in varying degrees, after the federal Labor-Management Relations Act of 1947 (the Taft-Hartley Act), by which Congress effected a balance of power between employers and unions to protect the public and the economy from the harmful effects of work stoppages:

Chapter 41.58 RCW – PUBLIC EMPLOYMENT LABOR RELATIONS, created PERC and establishes some general principles and authority.

Chapter 28B.52 RCW – COLLECTIVE BARGAINING—ACADEMIC PERSONNEL IN COMMUNITY COLLEGES, covers community and technical colleges and their faculty employees.

Chapter 41.56 RCW – PUBLIC EMPLOYEES’ COLLECTIVE BARGAINING ACT, covers all local government employers and employees (including classified employees of K-12 school districts), and certain groups of state employees:

- ▶ Printing craft employees at University of Washington (RCW 41.56.022);
- ▶ Classified employees of technical colleges (RCW 41.56.024);
- ▶ Washington State Patrol troopers (RCW 41.56.473).
- ▶ Teaching/research assistants at University of Washington (RCW 41.56.203);
- ▶ Independent providers of home care (RCW 41.56.026); and
- ▶ Family child care providers (Ch. 54, Laws of 2006).

Chapter 41.59 RCW – EDUCATIONAL EMPLOYMENT RELATIONS ACT, covers K-12 school districts and their certificated employees.

Chapter 41.76 RCW – FACULTY COLLECTIVE BARGAINING ACT, covers public four-year institutions of higher education and their faculty employees.

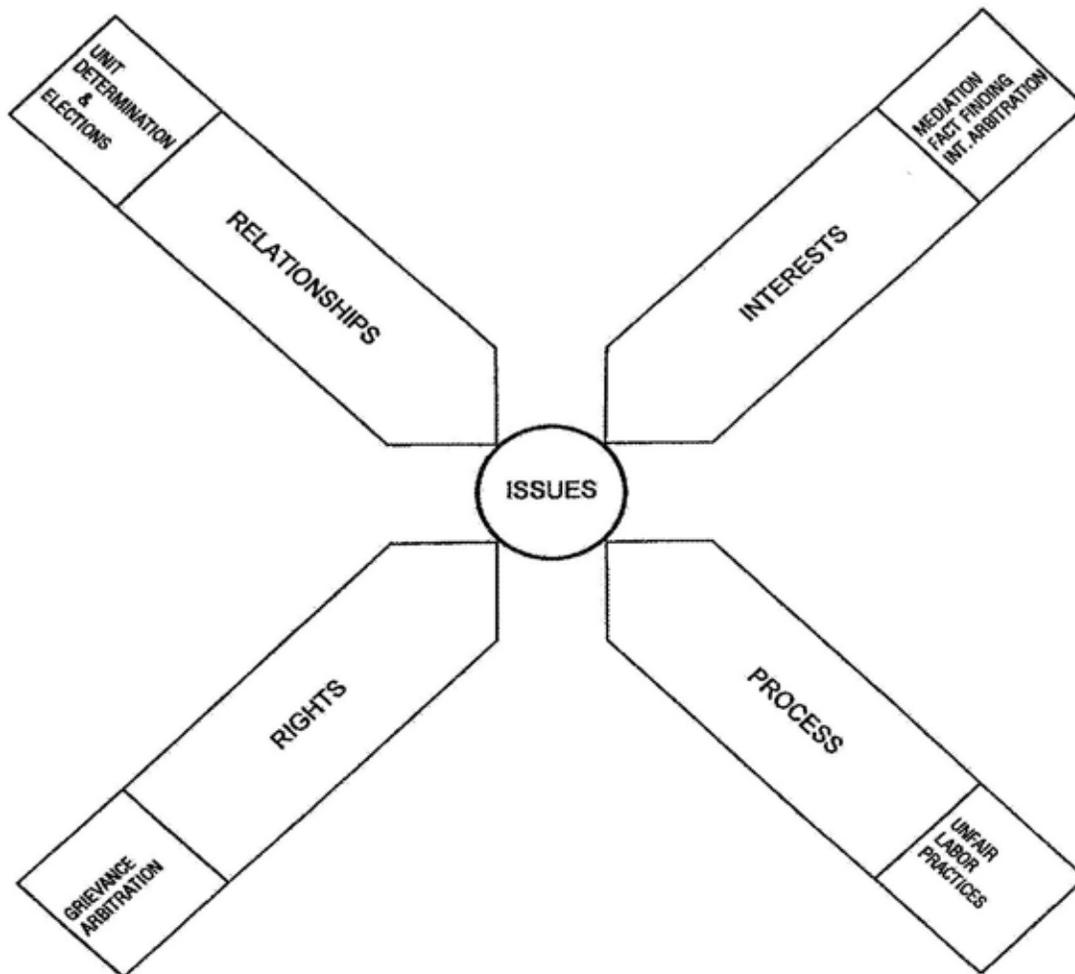
Chapter 41.80 RCW – PERSONNEL SYSTEM REFORM ACT, covers the state and state institutions of higher education and their civil service employees.

Chapter 49.08 RCW – ARBITRATION OF DISPUTES, covers employers and employees generally, including the private sector and “other” public sector.

Chapter 53.18 RCW – EMPLOYMENT RELATIONS—COLLECTIVE BARGAINING AND ARBITRATION, covers port districts and their employees, coordinated with Chapter 41.56 RCW.

Chapter 54.04 RCW – GENERAL PROVISIONS – PUBLIC UTILITY DISTRICTS (as interpreted by the Supreme Court of the State of Washington), covers public utility districts and their employees, coordinated with Chapter 41.56 RCW.

The collective bargaining process and dispute resolution procedures established by those statutes have been depicted as a windmill:



Balance is needed to make a windmill turn, and PERC administers a balanced set of dispute resolution procedures addressing all four types of issues that typically arise between labor and management:

RELATIONSHIPS ISSUES - Labor and management have a history of controversies (and even “recognition strikes”) about appropriate groupings employees for bargaining, about exclusions of “supervisors” or “confidential” employees from bargaining units, and about whether the employees in a bargaining unit will be represented by a union (or by which of two or more competing unions):

PERC conducts representation and unit clarification proceedings to determine appropriate bargaining units under statutory criteria, to determine the eligibility of individuals for inclusion in a bargaining unit, and to conduct elections or cross-checks to determine whether a union has the support of a majority of the employees.

PROCESS ISSUES - Labor and management have a history of controversies (and even “unfair labor practice strikes”) about threats or discrimination related to union activity, about employer interference in internal union affairs, and about union and/or employer bargaining tactics:

PERC conducts unfair labor practice proceedings to hear and determine claims that the “rules of the game” established by the Legislature have been violated. If a violation is found, a remedy is ordered.

INTERESTS ISSUES - Labor and management have a history of controversies (and “economic strikes”) about negotiating collective bargaining agreements.

PERC provides mediators, who act “without power of compulsion” to assist labor and management reach an agreement in contract negotiations. Mediation is extremely flexible and adaptable.

PERC administers (and may directly provide) factfinding for contract negotiations under Chapters 41.59 and 41.80 RCW. The non-binding recommendations of a “surrogate reasonable person” (based on evidence presented by the parties at a hearing) are offered as a substitute for the economic warfare of a threatened or actual work stoppage.

PERC administers (and may directly provide) interest arbitration under Chapter 41.56 RCW for limited classes of local government employees. The binding decision of a “surrogate reasonable person” (based on evidence presented by the parties at a hearing) is substituted for the right to strike or lock out.

RIGHTS ISSUES - Labor and management have a history of controversies (and even “grievance strikes”) about grievances requiring interpretation or application of an existing collective bargaining agreement.

PERC administers a panel of impartial arbitrators, who are independent professionals available to hear and decide grievance disputes.

PERC can provide staff members as arbitrators, to hear and decide grievance disputes under Chapters 41.56, 41.76, 41.80, 49.08, 53.18 and 54.04 RCW.

PERC can provide staff members as grievance mediators if the parties want to resolve the grievance dispute prior to the start of an arbitration hearing.

PERC has promulgated forms and procedural rules in the Washington Administrative Code (WAC) to assure uniform, impartial, efficient, and expert processing of all four types of controversies. Those forms and rules attempt to point labor and management toward the dispute resolution procedures appropriate to their particular controversy. At the hub of the windmill, the PERC staff also assesses the nature of each dispute presented to the agency for resolution, and proceeds to apply the dispute resolution techniques that are most appropriate to the situation.

GOAL

Provide timely and effective assistance to resolve impasses occurring in negotiation of collective bargaining agreements.

OBJECTIVES

Mediate negotiations until impasse is resolved.

Conduct factfinding, and process interest arbitration requests, where those procedures are applicable.

AGENCY ACTIVITY INVENTORY OUTCOME: Percent of mediation cases resolved without a work stoppage.

STRATEGIES

Assign a mediator within 3 days following all requests for mediation.

Provide labor and management with joint training, upon request, on the principles of interest-based bargaining.

Conduct mediation meetings consistent with the guidelines and principles outlined in the Code of Professional Conduct for Labor Mediators.

Utilize agency management staff or implement backup procedures when there is an imminent threat of a work disruption.

Maintain close communications with parties during a work stoppage.

GOAL

Provide uniform, impartial and expert adjudication of disputes arising out of employer-employee relations.

OBJECTIVES

Protect the “process” of collective bargaining. (Unfair labor practice claims reviewed and resolved by PERC.)

Resolve conflicts regarding appropriate bargaining units and the eligibility of individuals for inclusion in a bargaining unit. (Unit determination issues resolved by PERC.)

Determine questions concerning representation. (Elections or cross-checks conducted by PERC.)

Determine an employee’s obligation to pay union dues and/or representation fees where the employee asserts a right of non-association based on religious beliefs. (Non-association claims resolved by PERC.)

AGENCY ACTIVITY INVENTORY OUTCOME: Percent of adjudicative proceedings resolved without court litigation.

STRATEGIES

Adhere to Revised Code of Washington (RCW) statutes establishing collective bargaining processes and procedures.

Adhere to state Administrative procedure Act (APA) and implementing Washington Administrative Code (WAC) regulations adopted by PERC and by the Chief Administrative Law Judge.

Adhere to precedents established by PERC and Washington courts, interpreting applicable RCW and WAC provisions.

Conduct all proceedings without procedural errors by the agency.

GOAL

Administer uniform, impartial, and expert grievance arbitration for disputes arising out of interpretation and application of collective bargaining agreements.

OBJECTIVES

Maintain a “Dispute Resolution Panel” listing pre-qualified and experienced impartial arbitrators available to decide grievance disputes.

Resolve grievance issues by assignment of PERC staff members as arbitrators.

Resolve grievance issues by assignment of PERC staff members as grievance mediators.

AGENCY ACTIVITY INVENTORY OUTCOME:

- **Percent of arbitration proceedings resolved without court litigation.**
- **Percent of grievance mediation cases resolved without a work disruption.**

STRATEGIES

Adhere to Revised Code of Washington (RCW) and Washington Administrative Code (WAC) provisions on grievance arbitration procedures.

Provide timely and random referrals from the “Dispute Resolution Panel” to labor and management, upon request.

Adhere to precedents established by arbitrators interpreting labor contracts.

Conduct arbitration proceedings in conformity with the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, as last approved by the Federal Mediation and Conciliation Service.

Provide grievance mediation and arbitration services by agency staff members in a timely manner.

Conduct grievance mediation meetings consistent with the guidelines and principles outlined in the Code of Professional Conduct for Labor Mediators.

GOAL

Provide expertise to labor and management by issuing carefully researched and well-reasoned decisions.

OBJECTIVES

Minimize Staff member decisions being reversed by appeal to the Commission

Minimize Commission decisions being reversed by appeal to the court system.

AGENCY ACTIVITY INVENTORY OUTCOME: Percent of adjudicative proceedings resolved without court litigation.

STRATEGIES

Follow precedent to provide predictable outcomes on which labor and management can base their future conduct.

Provide cogent explanations for changes of policies.

Provide cogent reasoning in cases of first impression.

Use (and promote the use by labor and management of) emerging technology to expedite legal research.

Provide staff members with National Judicial College training on writing decisions.

APPRAISAL OF EXTERNAL ENVIRONMENT

PERC does not initiate cases or control its case intake, so variances of external influences on agency clientele affect annual PERC statistics.

- The Washington State Legislature has indicated confidence in PERC and the collective bargaining process it administers, by enacting 19 expansions of PERC's jurisdiction since 1976. The latest enactment, adding about 10,000 family child care providers in 2006, represents about a 3% increase in the number of employees under PERC's jurisdiction.(PERC provides its dispute resolution services for approximately 330,000 public sector employees.)
- The Supreme Court of the State of Washington has indicated confidence in PERC and the dispute resolution services it provides, by affirming or expanding PERC's jurisdiction in 8 cases decided since 1976.
- PERC's workload generally increases when layoffs of bargaining unit employees are threatened or actually implemented. The reduction of sales tax revenue, federal funding, or levy funds create immediate impact on PERC's local government and K-12 clientele. The passage of initiative measures limiting state government expenditures and eliminating the value-based motor vehicle excise tax have similar impact on state government clientele.
- PERC's clientele generally file more cases when the economy is unstable. That is, when the economy slows, or is on the rebound, more cases are filed. During economic slowing, the threat of layoffs and/or compensation curtailment may result in issue(s) brought to PERC. Conversely, during periods of economic growth, the resulting increased revenue, and past union concessions create possibilities for labor disputes to be resolved by PERC. It appears Washington State is rebounding from an economic downturn. Therefore, pressure is building among employee groups to make improvements where prior concessions were made.
- PERC is dealing with an emerging trend of rising health care insurance as an issue in most labor disputes that it mediates. Health care costs have consumed an increasing proportion of employer budgets. Unions that won employer payment of health care costs as "fringe benefits" have been fighting to protect those benefits, while employers have increasingly sought employee co-payment of health care costs.

TRENDS IN CUSTOMER CHARACTERISTICS

PERC's caseload and activities are affected by changes of clientele rights and approaches. There are multiple clientele-driven reasons for projecting ongoing demand for PERC's services.

1. A split has occurred within the American Federation of Labor / Congress of Industrial Organizations (AFL-CIO) resulting in the creation of the Change to Win Coalition (CTW). CTW unions are engaging in pro-active organizing efforts. One of the CTW unions is Service Employees International Union (SEIU), has organized over 35,000 Washington public sector employees in the past three years. One of the AFL-CIO unions, the Association of Federal, State, County and Municipal Employees (AFSCME), has recently begun organization efforts for approximately 6,000 Washington foster care providers. The creation of rival labor organizations such as the AFL-CIO and CTW will lead to more organization efforts, and could lead to the rival organizations "raiding" each other's bargaining units. PERC staff and the Commission will process any representation petitions filed, including holding such hearings, issuing such decisions, and conducting such secret-ballot elections as are appropriate.
2. PERC anticipates ongoing demand for its services from its traditional clientele (mostly local government and schools). Employers, unions and employees file all cases processed by PERC, and they advocate their own positions in all proceedings before PERC. In enacting collective bargaining laws, Congress and state legislatures have recognized that there have always been – and will always be – disputes in the workplace. PERC staff and the Commission will process any cases filed, including providing such mediation, holding such hearings, issuing such decisions, and conducting such secret-ballot elections as are appropriate.
3. PERC anticipates ongoing demand for its services under the Personnel System Reform Act (PSRA) covering state civil service employees. The parties are continuing to establish their relationships in light of new collective bargaining rights on wages and benefits:
 - A. Unfair labor practice filings by individual employees have been unexpectedly high since the first PSRA contracts were negotiated in September 2004.
 - *Contract ratification process:* Unions agreed to allow non-union members a right to vote concerning the ratification of the initial collective bargaining agreements. Numerous employees filed complaints claiming non-union members were given insufficient notice of the ratification vote, or incomplete notice of their right to vote in the ratification election. PERC staff members have issued decisions finding unions guilty of unfair labor practices in several cases. Appeals from those decisions are pending before the Commission as of May 2006. Several additional

cases of this type are being held in abeyance by PERC staff members until the Commission decides the pending appeals.

- *Union security obligations:* The first PSRA contracts included “union security” language, obligating represented employees to pay union dues or representation fees as a condition of employment. The effect of this language has been opposed by numerous employees. Several employees have been discharged for failure or refusal to pay union dues. Some discharged employees are being offered reinstatement and backpay at union expense as of May 2006.

- B. Representation case activity was high in March 2005, when a statutory “window” period for filing petitions with PERC gave state civil service employees their first opportunity to change unions or decertify their union since the PSRA was enacted. At least 45 cases were filed, affecting about 30% of all union-represented state employees. PERC has received informal indications as of May 2006 that some state civil service employees are planning to mount another round of decertification efforts in March 2007.
 - C. First contracts were negotiated without using statutory impasse procedures of mediation and fact-finding.
 - D. To our knowledge, supplemental bargaining has not been implemented as authorized in the PSRA.
 - E. Early in the second year of the PSRA, the parties began using the grievance mediation services at PERC. It appears that this is the start of a trend where the parties have discovered the advantages of using PERC staff members as grievance mediators.
 - F. For many years, the Personnel Resources Board (PRB) was the exclusive arbitrator for all state collective bargaining agreements. Under terms of the PSRA, the parties were allowed to select their own arbitrators. The parties chose to use arbitrators supplied from the American Arbitration Association (AAA) list. The parties paid for each list of arbitrators and for the services of the arbitrator selected from the list. In the event that the parties ask for arbitration service from PERC, agency staff will process any grievance arbitration cases filed, holding hearings and issuing arbitration awards as are appropriate. If the parties ask, they may use the services of PERC’s dispute resolution panel for the selection of an arbitrator.
4. Clientele are appealing more staff decisions to the Commission. A review of the Commission’s docket shows that the number of appeals has more than doubled over the last two years. However, our records show that a vast majority of appeals end with the Commission and are not appealed to the courts.

INTERNAL CAPACITY AND FINANCIAL HEALTH

Agency Structured and Staffed to Promote Efficiency

PERC's structure and operating methods are designed to keep bureaucracy and structure out of the way of accomplishing an agency mission that affects 330,000+ public employees in the state:

- PERC is a single-program agency with a widely-varied clientele. That enables shifting dispute resolution resources on short notice, to maximize their effect where most needed.
- PERC's "multi-functional" staff members are trained to perform all types of dispute resolution. That enables shifting resources on short notice to maximize their effect where most needed.

PERC's internal structure been changed to address the new workload and supervision of added staff. Using "master-level professionals" in leadership roles (as distinguished from bureaucrats) has been a successful strategy shift in recent years. Six long-time PERC staff members have been given case management and/or supervisory responsibilities, but also "keep their hand in" by carrying their own individual caseloads. This keeps subject matter experts directly involved in making "close to the clientele" decisions on the management of case processing.

Labor relations agencies exist in most other states, but it is difficult to make meaningful comparisons:

- Statutes differ markedly from state to state, and sometimes require unique services or delivery methods that differ from those provided by Washington law (e.g., Illinois and Ohio grant all public employees the right to strike, where Washington does not; Iowa imposes interest arbitration on all public employee bargaining, where Washington does not; Oregon and Wisconsin make violation of a collective bargaining agreement an unfair labor practice, where Washington does not).
- Agency structures in other states sometimes preclude the "single-program agency" and "multi-functional staff" strategies successfully used by PERC (e.g., California, Massachusetts, Connecticut and Pennsylvania each have separate agencies to perform the mediation and adjudication functions consolidated in PERC).

Among the state agencies who are members of the Association of Labor Relations Agencies (ALRA), the Washington PERC is widely-regarded as a mentor/resource and model for other agencies engaged in the resolution of labor-management disputes.

Recruitment problems face PERC in both the short-term and long-term:

- ▶ PERC was unable to find experienced applicants qualified to fill all mediator/adjudicator positions that were advertised in 2003, when the agency increased its staff to deal with four new laws enacted in 2002. This is a confirmation of the difficulties of the last few PERC recruitment efforts, when PERC was unable to successfully recruit experienced people from its clientele and counterpart agencies in other states.
- ▶ PERC hired some inexperienced persons as trainees in 2003, and those individuals have matured into productive staff members, but their training required heavy investment of time and effort by senior staff and they were not able to independently handle full caseloads for periods up to 15 months.
- ▶ PERC's efforts to obtain an adjustment of staff salary levels through the Department of Personnel have been unsuccessful. PERC continues to explore alternatives which will make it possible to attract experienced applicants.
- ▶ One senior PERC mediator/adjudicator has announced he will retire in 2006, and at least 30% of PERC's mediator/adjudicator staff members are currently eligible to retire. There is a high likelihood that PERC will need to recruit new staff by June 30, 2008.
- ▶ PERC's first and only Executive Director has served public sector collective bargaining for over 30 years. The Director has announced his retirement in the fall of 2006. The Commission faces significant challenges in the vacancy of this position. Similar to the mediator/adjudicator positions, the compensation package for this position presents its own challenges.

Capital Facilities

Relocation of both PERC offices was accomplished during the 2003-05 biennium, to put PERC staff and facilities in the geographic areas with the greatest caseloads. PERC's principal office is located in Olympia, where the bulk of the PSRA collective bargaining process occurs. PERC's branch office in Kirkland is in the county where the largest percentage of non-PSRA caseload occurs.

Technology investments

Technological concerns have been addressed by PERC dating back to implementation of the first computerized case docketing/tracking system among labor relations agencies in the nation (in 1980).

Service delivery methods

PERC launched a clientele survey in May 2006. The primary purpose is to identify gaps in service delivery and to make appropriate improvements.

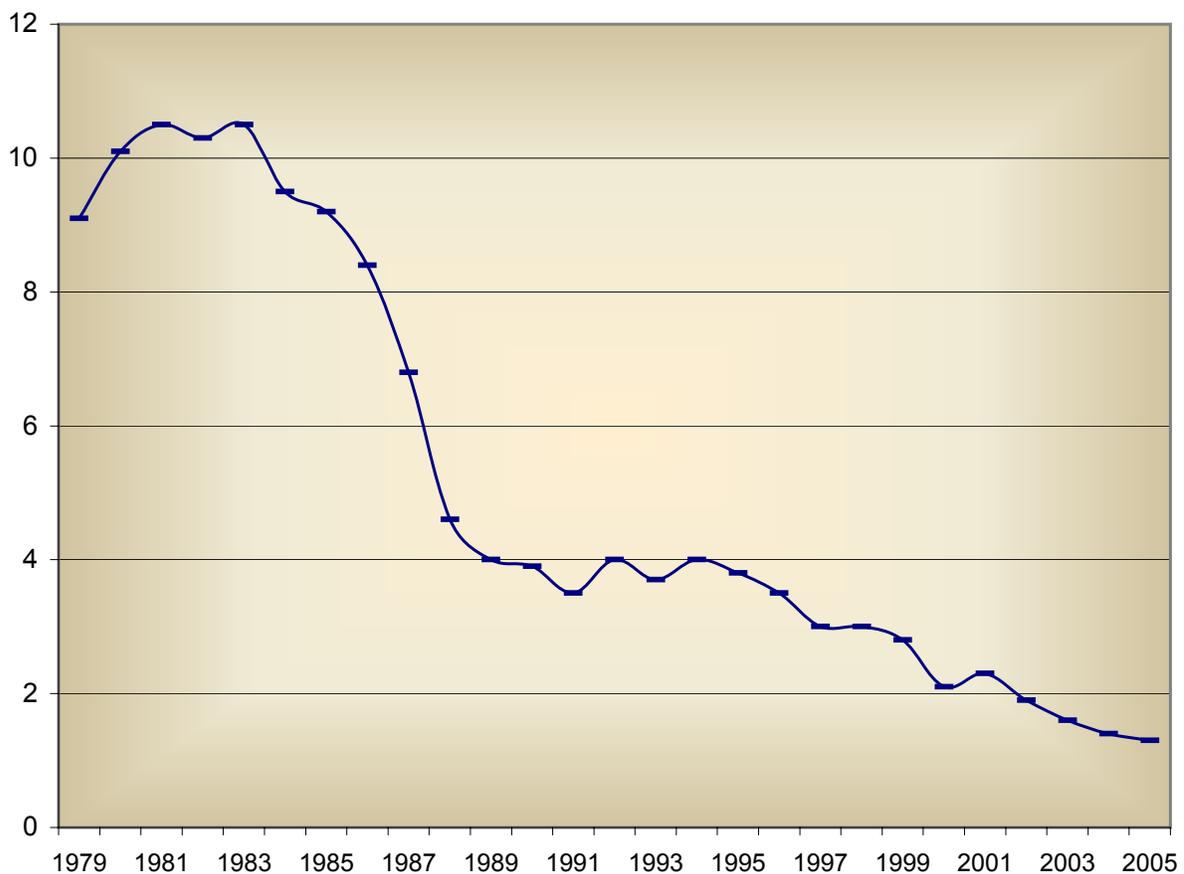
PERFORMANCE MEASURES AND ASSESSMENT

PERC strategies have produced good results.

PERC's highly-experienced and well-trained staff has delivered "uniform and impartial . . . efficient and expert" resolution of labor-management disputes:

- ✓ A substantial reduction of public sector work stoppages (strikes and lockouts) has occurred since PERC commenced operations in 1976. The average of only 1.3 incidents per year in the most recent 10 years compares favorably with the overall average of 10.4 incidents per year since 1982. Fiscal year 2006 was the second consecutive year in which there was not a public sector strike in Washington State.

Rolling 10 year average number of strikes



- ✓ A substantial acceptance of PERC's decisions by clientele and the courts has occurred since 1976. PERC's overall success rate exceeds 99% of all decisions issued by PERC being the final and accepted judicial review of clientele issues. This record indicates PERC is successful in its pursuit of being uniform, impartial, expert, and efficient in their legal analysis of labor relations disputes.