

**2009-2011  
STRATEGIC PLAN  
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# **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 National Labor Relations 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 (RCW 41.56.028);
- ▶ Adult Family Home providers (RCW 41.56.029);
- ▶ Teaching/research assistants at Washington State University (Ch. 203, Laws of 2008)

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.

## DESCRIPTION OF CASE TYPES

PERC implements a legislative purpose *to promote peace and harmony in labor-management relations* in the state, applying a variety of procedures and techniques to resolve disputes arising under state collective bargaining laws. There is no federal regulation of collective bargaining involving public sector employees.

- ▶ **Representation cases** involve grouping employees for the purposes of collective bargaining, and determining which organization (if any) has the support of a majority of the employees in an appropriate bargaining unit.
  - ▶ PERC conducts hearings and issues decisions to rule on procedural issues and to determine appropriate bargaining units; and
  - ▶ PERC determines questions concerning representation by conducting elections or cross-checks to obtain the majority view among the eligible employees in a bargaining unit, and certifies the results.
- **Unit clarification cases** involve modifications of existing bargaining units.
  - ▶ Providing an administrative dispute resolution process for bargaining unit “eligibility” issues reduces the potential for impasses at the bargaining table; and
  - ▶ PERC conducts hearings and issues decisions to rule on procedural issues and to determine appropriate modifications of bargaining units.
- **Unfair labor practice cases** involve claimed violations of the process and procedure rules imposed by the Legislature upon employers and unions in state collective bargaining laws.
  - ▶ PERC conducts hearings and issues decisions to rule on procedural and substantive issues; and

- ▶ PERC orders appropriate remedies where a violation of the law has occurred, and follows up to assure compliance with those orders.
- **Mediation cases** involve negotiations on the terms of collective bargaining agreements.
  - ▶ PERC responds to requests from employers and/or unions, but can offer mediation if a dispute threatens to disrupt public services.
  - ▶ Acting *without power of compulsion*, PERC mediators attempt to effect communications and persuade parties to resolve differences about their future interests.
- **Interest arbitration cases** involve limited classes of public employees (defined in RCW 41.56.030(7), RCW 41.56.492 and Chapter 74.39A RCW), where the Legislature has provided for mandatory resolution of impasses arising from the parties' inability to reach agreement on the terms of a collective bargaining agreement.
  - ▶ PERC certifies the issues remaining in dispute following mediation, and resolves disputes as to whether those issues are mandatory subjects of bargaining; and
  - ▶ The arbitrator holds a hearing and issues a binding decision establishing the parties' future interests under statutory standards.
- **Fact-finding cases** involve school districts and their certificated employees, if parties fail to agree in mediation on a collective bargaining agreement.
  - ▶ The fact-finder conducts a hearing and issues non-binding recommendations on reasonable resolutions of the parties' future interests; and
  - ▶ The parties are required to respond to the recommendations, which will be made public after one week if the parties don't settle by that time.

- **Grievance mediation cases** involve the interpretation or application of existing collective bargaining agreements.
  - ▶ Acting *without power of compulsion*, PERC mediators effect communications between parties and attempt to persuade the parties to resolve their differences on contract rights; and
  - ▶ Unresolved grievances must be dropped or submitted to grievance arbitration.
  
- **Grievance arbitration cases** also involve the interpretation or application of existing collective bargaining agreements.
  - ▶ The arbitrator (who may be a member of the PERC staff or another qualified professional) holds a hearing and issues a binding decision on procedural and substantive issues concerning the parties' contractual rights; and
  - ▶ Grievance arbitration is the legislatively-preferred alternative to strikes and/or lockouts concerning grievance issues.
  
- **Nonassociation cases** involve employees whose bona fide religious beliefs or tenets/teachings of a church or religious body form the basis for an objection to paying union dues.
  - ▶ PERC conducts hearings and issues formal decisions to rule on procedural and substantive issues.
  
- **Settlement cases** involve agency efforts to help parties resolve unfair labor practice and union nonassociation cases without the need for litigation. Settlement cases are voluntary and occur only when the parties to litigation agree to participate in settlement discussions.
  
- **Training cases** involve agency personnel making presentations to labor and management groups on particular collective bargaining subjects. This case type also involves the agency's interest-based bargaining training work, which has been very well received by a wide range of clientele.

The type of service provided by PERC in a particular case depends on the applicable statute, and the issue(s) to be resolved.

## **GOAL**

**Provide impartial assistance to labor organizations and employers to help them reach and/or administer collective bargaining agreements.**

## **OBJECTIVES**

Maintain agency's neutral, fair and objective reputation in contract and grievance mediations.

Increase the perceived quality of contract mediation/grievance mediation and fact-finding services.

Maintain prompt service in responding to mediation requests.

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

## **STRATEGIES**

Assign "best matched" staff mediator in a timely manner.

Schedule mediation sessions as soon as possible after a mediation request is filed.

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

Promptly conduct fact-finding hearings and timely issue well-reasoned recommendations to the parties.

Recruit, train and retain qualified staff.

## **GOAL**

**Assure that rights granted employees by the Legislature through collective bargaining statutes are upheld, and that the parties uphold their responsibilities in the administration of their collective bargaining agreements.**

## **OBJECTIVES**

Maintain APA timelines for the preliminary rulings in adjudicative case filings.

Increase compliance with the APA regarding timeliness of issuing staff decisions.

Increase timeliness in the issuance of arbitration decisions.

Increase voluntary settlements in lieu of formal litigation.

Maintain standards of well-reasoned, well-researched and cogent decisions.

**AGENCY ACTIVITY INVENTORY OUTCOME: Serve as the penultimate expert in labor-management relations adjudication.**  
(Percent of adjudicative proceedings resolved without court litigation.)

## **STRATEGIES**

Establish goals and monitor the timeliness of the preliminary ruling process.

Schedule hearings at the earliest time available.

Conduct adjudicative proceedings consistent with Washington Administrative Code (WAC) regulations adopted by PERC and by the Chief Administrative Law Judge.

Schedule and conduct pre-hearing settlement conferences in which voluntary settlements are encouraged in lieu of adjudicative proceedings.

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

Agency leadership provides guidance, training, and support of staff members throughout adjudicative proceedings until decision is issued.

Recruit, train and retain qualified staff.

## **GOAL**

**Assure employees' statutory right of free choice to determine whether they wish to be represented for purposes of collective bargaining in an appropriate bargaining unit.**

## **OBJECTIVES**

Maintain "laboratory conditions" within our control under which employees may exercise their free choice on the selection of a bargaining representative.

Decrease the time from filing of representation petitions to certification of results.

Increase the number of voluntary election agreements.

Decrease the time to issue a decision following a hearing to modify bargaining units, determine appropriate bargaining units and placement of employees within the unit.

Maintain standards of well-reasoned, well-researched and cogent decisions.

Issue representation case decisions within APA guidelines.

**AGENCY ACTIVITY INVENTORY OUTCOME: Serve as the penultimate expert on representation and unit clarification matters. (Percent of adjudicative proceedings resolved without court litigation.)**

## **STRATEGIES**

Absent procedural defects, conduct elections and cross-checks.

Adhere to Revised Code of Washington (RCW) and Washington Administrative Code (WAC) provisions on election and unit clarification cases.

Conduct adjudicative proceeding consistent with Washington Administrative Code (WAC) regulations adopted by PERC and by the Chief Administrative Law Judge.

Schedule and conduct pre-hearing conferences to clarify issues and educate parties in an effort to conduct an election without need for an adjudicative proceeding.

Adhere to appropriate legal case precedents.

Agency leadership provide guidance, training, and support of staff members throughout proceedings until decision or certification is issued.

Recruit, train and retain qualified staff.

## **GOAL**

**Promote labor peace through education, training, and outreach.**

## **OBJECTIVES**

Increase Executive Director and staff interaction with stakeholders.

Continue to be a primary sponsor in the annual Labor and Employment Relations Association (LERA) conference.

Increase collective bargaining educational opportunities for clientele.

Increase PERC's interest based bargaining training program.

**AGENCY ACTIVITY INVENTORY OUTCOME: Provide training and outreach services to clientele.**

## **STRATEGIES**

Promote PERC's availability for speaking engagements at labor and management association meetings through PERC's web site, conferences, and various meetings.

Continue to take a leadership role in the planning, participation and promotion of the annual LERA conference.

Examine customer characteristics and engage stakeholders in developing focused training and outreach programs.

At speaking engagements and conferences, discuss PERC's interest based bargaining training program.

Assess need for outreach services from specific clientele groups or develop programs on specific PERC services.

## PERFORMANCE ANALYSIS

PERC's performance measures are focused on how well the staff and Commission accomplish the agency's mission:

It is the mission of the Public Employment Relations Commission to prevent or minimize disruptions to public services by the uniform, impartial, efficient and expert resolution of labor-management disputes.

The Commission workload can best be explained by separating cases as being either formal or informal cases.

Formal cases are adjudicative in nature and consist of several elements. PERC staff conduct a hearing, hear witness testimony, and receive exhibits and other evidence into the record. When a hearing is closed, transcripts are prepared by the official court reporter, post-hearing briefs are filed, and the presiding PERC staff member issues a legally binding decision. If any party to the case feels that the staff member's decision is incorrect, the decision may be appealed to the three member Commission. The Commission reviews the case, considers case precedent and issues its decision. A Commission decision may be appealed to the Superior Court in the county where the dispute originated or in Thurston County.

In lieu of parties filing formal cases at PERC, they may file cases with the Superior Court in the county where the dispute originated. The court has concurrent jurisdiction over most formal cases PERC adjudicates but may decline to exercise jurisdiction, referring the matter to PERC. PERC's first Agency Activity Outcome (or performance measure) concerns itself with measuring the Agency/Commission's success at being the ultimate adjudicative agency for labor disputes under its jurisdiction.

The first performance measure evaluates the percent of public employment-related adjudicative proceedings resolved without court litigation. The target for this performance measurement is 99%. The results indicate that PERC's expertise is very widely accepted and that PERC is accomplishing its mission statement to provide "uniform, impartial, efficient and expert resolution of labor-management disputes".

FY 07	99.0%	FY 06	98.6%
FY 05	98.9%	FY 04	99.6%

Informal cases include a variety of case types. Historically, contract and grievance mediation cases represent over 80% of PERC's informal work. Although most cases are not high profile, these types of cases may show up on local news programs in August and September when school district employees and school districts are "in mediation" with a possibility of a strike or lockout. In light of this, PERC's second performance measure is represented as the percentage of public employment contract negotiation impasses resolved without work stoppages. The target for this performance measurement is 100% each year.

FY 07	100.0%	FY 06	100.0%
FY 05	100.0%	FY 04	99.0%

The combination of these two measures represents the overall peaceful condition of public sector labor relations in the State of Washington. Obtaining such exceptional results requires a highly functional environment between PERC and the labor professionals employed throughout PERC's jurisdictions. The PERC staff and Commission need to be responsive, experienced, trained, available and recognized experts in their field. PERC's jurisdiction/clientele must manage changing expectations, external pressures, and have the ability to recognize where limitations exist and where future interests and opportunities may avail themselves.

In summation, PERC recognizes the valuable partnership between the agency and its clientele which ensures that there is no disruption or minimal disruption to public services due to labor disputes. The agency is committed to maintaining peaceful public sector labor relations and recognizes that without our clientele's attributes and contributions, these measures would not be possible.

## **EXTERNAL CHALLENGES AND OPPORTUNITIES**

PERC has special concern about its external environment because the agency's workload is driven by clientele-filed cases. While PERC's services are still in demand, the reasons for filing any particular case are beyond the agency's control. No two cases are identical, and the level of complexity among cases varies. A number of factors influence whether or not cases are filed:

### Changes in the economy:

Traditionally, PERC experiences an increase in case filing with each significant downturn in the economy. Uncertain economic conditions lead to uncertainty in the workplace. As the effects of an economic downturn reach public employers, there is a corresponding impact on collective bargaining. Public employers have to reduce expenditures, thereby reducing the amount of funds available for employee salaries and benefits. Such reductions are reflected to PERC in the complexity and number of cases arising from the collective bargaining arena, and may spur interest in unionization, thus leading to more representation case filings with the agency.

In some situations, public employers may have to ask unions to make concessions in wages or other terms of their employment. In such situations, employees find themselves struggling to keep what they already have, rather than seeking further improvements through bargaining. Based upon historical experience, it can be assumed that PERC can expect an increase in case filings. The general downturn in the national economy is starting to have an effect within public entities within the agency's jurisdiction.

### Client populations and demographics:

PERC's jurisdiction has grown steadily over the past five years. While cities, counties and school districts have remained relatively stable in number, PERC's state jurisdiction continues to grow. A number of non-traditional groups have been granted collective bargaining rights through the passage of specific legislation. Groups such as home health care workers, home child care workers, and adult family home owners are now under PERC jurisdiction and have begun collective bargaining negotiations. Public sector unions are organizing more aggressively and PERC anticipates other non-traditional groups will seek bargaining rights. Demographically, the non-traditional groups are very diverse, and present unique issues for PERC. For example, the need for multiple language translations for agency documents is at an unprecedented level. Bargaining unit membership tends to be "state-wide" as opposed to a single geographical location. In many cases, there is no central employer location, which makes it difficult for the employer to post a PERC

notice. PERC will continue to respond to the challenges presented by non-traditional bargaining units.

Client needs, preferences or expectations:

PERC strives to meet the high expectations of its clientele. In 2007, PERC completed an extensive clientele survey that noted the agency's strong points and areas where improvement could be made. PERC has used the clientele survey to improve its case handling processes and to reduce the time it takes for a decision to be issued. PERC understands that clientele needs vary, depending on each clientele group's familiarity with the collective bargaining process. While some groups have bargained collectively for decades, others have just started negotiations on a first contract. PERC recognizes the different needs that each group brings to the agency and must provide assistance and guidance that will be appropriate and meaningful for each group. Agency decisions must be clear and concise, and PERC staff must be available when the clientele need them.

Clients expect timely service, so PERC is emphasizing process improvements to move cases as quickly as possible without sacrificing quality. Emphasis on timely case processing has a direct effect on clientele, who are now expected to proceed to hearings in shorter time periods. PERC provides notifications to clientele about the agency's emphasis on timely case processing.

The way that clientele expect services to be delivered:

PERC's clientele expect agency services to be delivered by an expert and impartial group of labor adjudicator/mediators. Clientele want agency staff to be prepared to conduct hearings fairly and to issue well-reasoned and concise decisions. In the area of mediation, clientele expect staff members to be familiar with several different dispute resolution techniques and to apply the technique best suited to assist in the particular situation. They expect and deserve PERC mediators to be well versed in industry jargon, standards, and principles of operation. Clientele have also expressed an interest in attempting to settle certain types of unfair labor practice litigation before hearing, and the agency has responded to this interest by initiating settlement processes that have been very successful.

The agency has adopted an active outreach focus to improve communication between the agency and its clientele. PERC's clientele have expressed interest in new training opportunities. To meet that interest, the agency has supplied staff members as speakers to a number of clientele groups. In October 2007, the agency offered a "labor law basics" course to state agencies and union clientele which drew almost 300 participants. Similarly, the agency has seen an increase in the number of clientele

requests for Interest Based Bargaining (IBB) training, and PERC staff have been providing an unprecedented number of IBB training meetings.

Expectations of partners and suppliers:

While understanding that the agency has jurisdiction to decide disputes presented for resolution, PERC seeks input from its clientele to improve its practices and procedures. During FY 07 and 08, PERC held a number of “pre-submission” focus group sessions where clientele representatives shared concerns with existing agency rules and presented proposals for significant rule modification. In the end, PERC held a series of rule adoption meetings which resulted in the amendment of 48 rules, the addition of 11 new rules, and the repeal of 3 rules.

Law or regulatory environment:

Over the past 5 legislative sessions, at least one new group of public employees has been placed under the PERC’s collective bargaining jurisdiction, with graduate assistants at Washington State University being added in March 2008. Numerous interest groups propose new bargaining jurisdictions each year. PERC anticipates additional legislation will be introduced and the agency will make necessary adjustments as new groups are added to its jurisdiction.

Costs of doing business:

This next biennium includes rate increases for both of PERC’s office leases. In regard to utilities, Puget Sound Energy has requested a rate increase of approximately 10%. PERC staff continue to travel to the site of labor disputes, and travel costs continue to climb.

The additional administrative burden of applying to the WSQA, highly engaged legislative and rule review processes, plain talk, and other necessary administrative exercises have re-routed an FTE and associated resources from program work to address these numerous administrative details.

## **INTERNAL CAPACITY AND FINANCIAL HEALTH**

The agency is structured and staffed to minimize bureaucracy and maximize results. As a single program agency, PERC positions are aligned to serve its widely-varied clientele. PERC staff members are trained to perform all types of dispute resolution in any jurisdiction. This multi-functional staffing model allows the agency to be more responsive to requests for specific personnel, and allow for the most efficient manner for addressing the variety of case work and clientele. Prior documented recruitment challenges appear to be, at least temporarily, resolved. This may be the result of funding the 2006 salary survey to within 25% of industry standard. The LRAM job class realized a 7.5% salary increase and, with step L being added to merit increases, the top end of the LRAM class increased by 10%. In FY 08, the agency hired 3 qualified LRAM personnel.

Senior level staff support agency efforts in supervisory/management roles. The senior staff manage caseload, review decision writing, and otherwise support and advise the Labor Relations Adjudicatory/Mediator personnel in the agency. Of primary importance, the senior staff are members of the PERC Management Team and have been tasked with a series of initiatives that are designed to improve the agency's service delivery methods. There has been across-the-board success in responding to the needs expressed by PERC clientele in the 2007 survey.

Succession planning for the 09-11 biennium is of primary importance. By July 2011, a majority of the management team will have retired. Over 1/3 of the LRAM staff are now eligible for retirement. The loss of expertise in a smaller agency needs to be planned for in advance. This issue has become the primary factor in addressing PERC's workforce issues during the ensuing biennium. Remaining staff will be asked to respond to this concern concurrent with activities of subsequent recruitments and training of new personnel.