

Draft Report - Marine Employees' Commission and Public Employment Relations Commission Review



Prepared For:
Joint Transportation Committee
Washington State Legislature

Consultant Team:
Cedar River Group, LLC

October 2010

EXECUTIVE SUMMARY

The 2010 legislature directed the Joint Transportation Committee (JTC) to compare the state's two public employment relations agencies: the Marine Employees' Commission (MEC), which administers Washington State Ferries (WSF) marine employment relations; and the Public Employment Relations Commission (PERC), which administers all other state and local public employment relations.

§204(9)(b) of SSB 6381 requires the JTC to;

- Conduct a comparison of the processing time of labor-related grievances and hearings at PERC and MEC; and
- Investigate whether the necessary expertise exists at PERC to administer the grievances and hearings currently administered by MEC.

Consultants Conclusions:

- **PERC processes unfair labor practice and grievance arbitration decisions, which are the employment relations areas in which MEC is most active, faster than MEC.**
- **PERC has the necessary expertise to administer the grievances and hearings currently administered by MEC.**

Employment Relations Responsibility

PERC, which was created in 1975, administers collective bargaining statutes that cover all public employers and employees in the State of Washington with the exception of Washington State Ferries' (WSF) marine employment relations. WSF marine employment relations were excluded from PERC's jurisdiction with the re-establishment of MEC in 1983.

PERC issues decisions under nine state statutes and MEC under one.

There are six employment relations areas in which PERC and MEC have parallel responsibilities: representation; unit clarification; unfair labor practices; impasse resolution; grievance arbitration; and non-association/union security. MEC has more limited responsibilities than PERC in impasse resolution and grievance arbitration.

The MEC decisions reviewed included unfair labor practice, grievance arbitration, and unit clarification decisions. MEC has also certified issues for interest arbitration. The bulk of MEC's work is in the resolution of unfair labor practice cases (57 of 100 MEC decisions reviewed) and in grievance arbitration (41 of 100 MEC decisions reviewed).

Organizational Structure: Role of the Commissioners

- MEC relies on the commissioners – one of whom is required to have a management background, one a labor background, and a chair representing the public - to conduct all adjudicative proceedings, such as hearings and settlement conferences, and to write all decisions. The commissioners also have an appellate (i.e. hear appeals from decisions) function.
- PERC has three commissioners who must have a background in labor relations. Except in extraordinary circumstances, the commissioners have an appellate function only. PERC's Executive Director and staff are responsible for adjudicative proceedings, such as hearings and settlement conferences, and the staff issue decisions.
- Processing times at MEC are affected by this organizational difference. On occasion commissioners are not available to conduct proceedings or delays are caused because new commissioners have not been appointed. These delays cannot be modified by the addition of staff without substantive changes in how MEC works.

Processing Time: Unfair Labor Practice Decisions

PERC is faster in processing unfair labor practice complaints, except for the relatively infrequent requests for temporary relief and appeals where MEC is faster.

- *Decisions and orders that are subject to a normal process* (i.e. the matter was not held in abeyance and the decision was not subject to an expedited process). PERC's processing time is four months shorter in the 25 decisions (6 MEC and 19 PERC) reviewed.
- *Decisions where the complaint was held in abeyance* pending the outcome of grievance and arbitration processes. PERC's processing time is two years shorter for the five decisions (four MEC and one PERC) reviewed.
- *Orders closing settled or withdrawn complaints*. PERC's processing time is 7.5 months shorter for the 58 decisions (48 MEC and 10 PERC) reviewed.
- *Temporary relief orders*. MEC's processing time is one month shorter for the two cases reviewed (one each).
- *Appeals*. MEC's processing time is five months shorter for the four decisions reviewed (one MEC and four PERC.)

The primary reason for this difference in processing time is that PERC handles the initial processing of complaints faster than MEC.

- PERC has highly structured deadlines, utilizes a deficiency notice, amended complaint, and preliminary ruling process to define and limit causes of action, and requires respondents to answer within 21 days. PERC issues orders of dismissal where it finds there is no cause of action following the deficiency notice and amended complaint process.
- MEC does not have structured deadlines, issues relatively few deficiency notices (3 issued in 57 decisions) and does not have a preliminary ruling process. MEC found cause of action for all complaints and did not issue any orders of dismissal. Respondent answers are due two weeks prior to the hearing rather than within 21 days, and the respondent answers are extended by MEC if the hearing is delayed.

Processing Time: Grievance Arbitration Decisions

PERC has a faster processing time for grievance arbitrations awards. The average time for a PERC grievance arbitration is nine months and for MEC is 22.5 months.

MEC has a longer processing time because it is more willing than PERC to grant employer and union requests to defer action, continue hearings, and extend the time to file briefs. PERC does not allow the parties to extend grievance arbitration procedures, noting that if a grievance is important enough to file it is important to settle it promptly.

It should also be noted that changes in collective bargaining grievance procedures are likely to reduce the number of grievance arbitrations handled by MEC in the future.

Processing Time: Unit Clarification Decisions

MEC handles few unit clarification cases, with only two decisions among the 100 examined by the consultants. In the one unit clarification case where MEC made an award, MEC was faster than PERC taking five months compared to PERC's average processing time of eight months.

Expertise

The consultants conclude that PERC has the necessary expertise to administer WSF marine employment relations. The consultants' conclusion is based on: 1) a review of the expertise used by MEC in making the unfair labor practice, grievance arbitration, and unit clarification decisions reviewed for this report, and in certifying issues for interest arbitration for the 2009-11 biennium agreements; and 2) PERC's labor relations expertise.

The consultants found that MEC's unfair labor practice, grievance arbitration, and unit clarification decisions and the issues it certifies for interest arbitration:

- *Are based on legal interpretations.* MEC's WAC states that the commission or assigned commissioner may make official notice as evidence of any technical facts within the commissioner's specialized knowledge that have been so noticed. Parties are to be notified. The consultants did not find any notices of specialized knowledge in the MEC decisions. MEC decisions are instead based on legal interpretations including for example: whether the alleged unfair labor practice was a mandatory subject of bargaining; whether the alleged unfair labor practice rose to the level of an unfair labor practice; whether WSF had just cause in terminating an employee; and interpretations of collective bargaining language. The decisions include references to precedents established in previous MEC cases. In one grievance arbitration case MEC based its decision on an earlier ruling from the Washington State Court of Appeals. Certifying issues for interest arbitration is, by its very nature, an administrative law decision.
- *Involve matters that are similar to matters involved in PERC decisions.* The two unit clarification decisions involved administrative staff (a bid administrator and a facility services coordinator). The unfair labor practice and grievance arbitration decisions involved parking, payroll procedures, pay, employee theft, return to work after injury, and scheduling. In two instances in which decisions were made on shipboard staff (i.e. bos'n duties and return of a captain to the fleet) the decisions were not based on the nature of the work but rather on legal concepts (whether there was a unilateral change in an area that is a mandatory subject of collective bargaining and whether there was an obligation to bargain).

PERC staff and commissioners have expertise in labor relations that can be applied to WSF marine employment relations. The professional staff are either attorneys or have degrees in labor relations and the commissioners are attorneys with extensive labor relations backgrounds.

CONTENTS

EXECUTIVE SUMMARY	1
SECTION 1. PURPOSE AND APPROACH	1
A. Purpose	1
B. Approach.....	1
SECTION II. RESPONSIBILITIES	2
A. Public Employment Relations Commission.....	2
B. Marine Employees Relations Commission.....	3
C. Public Employment Relations Areas of Responsibility.....	4
D. MEC Decisions and Certifications	5
SECTION III. ORGANIZATIONAL STRUCTURE	6
A. Public Employment Relations Commission.....	6
B. Marine Employees' Commission.....	7
SECTION IV. UNFAIR LABOR PRACTICE PROCESSING TIME.....	9
A. Public Employment Relations Commission.....	10
B. Marine Employees' Commission.....	13
C. Comparison PERC and MEC	16
SECTION V. GRIEVANCE ARBITRATION PROCESSING TIME	21
A. Marine Employees' Commission.....	21
B. Public Employment Relations Commission.....	23
C. Comparison PERC and MEC	24
SECTION VI. UNIT CLARIFICATION PROCESSING TIME.....	26
A. Marine Employees' Commission.....	26
B. Public Employment Relations Commission.....	26
C. Comparison PERC and MEC	27
SECTION VII. EXPERTISE	29
A. Expertise	29
B. Expertise Used in MEC Unfair Labor Practice Decisions	30
C. Expertise Used in MEC Grievance Arbitration Decisions	32
D. Expertise Used in MEC Unit Clarification Decisions	33
E. Certifying Issues for Interest Arbitration	33

APPENDIX A. DECISIONS REVIEWED.....37
APPENDIX B. DECISION TIMELINES.....46
APPENDIX C. MEC COMMISSIONER APPOINTMENTS56

SECTION 1. PURPOSE AND APPROACH

A. Purpose

The 2010 legislature directed the Joint Transportation Committee (JTC) to compare the state's two public employment relations agencies, the Marine Employees' Commission (MEC) and the Public Employment Relations Commission (PERC). §204(9)(b) of SSB 6381 requires the JTC to:

- Conduct a comparison of the processing time of labor-related grievances and hearings at PERC and MEC; and
- Investigate whether the necessary expertise exists at PERC to administer the grievances and hearings currently administered by MEC.

B. Approach

1. Processing Time

The consultants examined the commissions' responsibilities, organization, and administrative rules to determine differences, other than budget allocations,¹ that might affect processing time.

The consultants reviewed MEC decisions 458-577 (dated between 2005 and 2010) finding three types: unfair labor practice decisions, grievance arbitration decisions, and unit clarification decisions. The consultants then examined a similar number of PERC decisions of each type and compared the processing time.

Cases brought by individuals were excluded because the processing time for these cases was frequently affected by the lack of legal counsel.

2. Expertise

The consultants examined the expertise used by MEC in making unfair labor practice, grievance arbitration, and unit clarification decisions, and in certifying issues for interest arbitration.

3. PERC and MEC Review

The consultants had full cooperation from MEC and PERC. Following our initial review of decisions, the consultants asked the commission staff to review findings on responsibilities, administrative rules, and processing time for their respective agencies. PERC and MEC staff provided corrections. The consultants also interviewed the Executive Director of PERC and the staff and Chair of MEC. MEC provided written comments that are incorporated into this report.

¹ There are MEC decisions that cite budget shortfalls that delayed processing cases, including Decision 458-MEC – hearing cancelled due to budget shortfall (unfair labor practice case decision dated 9/27/05); Decision 459-MEC – hearing cancelled due to budget shortfall (unfair labor practice case decision dated 9/23/05); Decision 478-MEC – second settlement conference cancelled due to shortfall (unfair labor practice case decision dated 5/4/06); and Decision 512-MEC hearing cancelled due to shortfall (grievance arbitration decision dated 4/17/07). These budget shortfalls resulted from increases in the MEC caseload: FY 2000 26 cases filed, FY 2001 55 cases filed, FY 2002 48 cases filed, FY 2003 53 cases filed, FY 2004 67 cases filed; FY 2005 47 cases filed, and FY 2006 29 cases filed.

SECTION II. RESPONSIBILITIES

This section reviews the responsibilities of the commissions finding that the responsibilities of the commissioners largely parallel each other.

PERC, which was created in 1975, administers collective bargaining statutes that cover all public employers and employees in the State of Washington with the exception of Washington State Ferries' (WSF) marine employment relations. WSF marine employment relations were excluded from PERC's jurisdiction with the re-establishment of MEC in 1983.

PERC issues decisions under nine state statutes and MEC under one.

There are six employment relations areas in which PERC and MEC have parallel responsibilities: representation; unit clarification; unfair labor practices; impasse resolution; grievance arbitration; and non-association/union security. MEC has more limited responsibilities than PERC in impasse resolution and grievance arbitration.

The MEC decisions reviewed included unfair labor practice, grievance arbitration, and unit clarification decisions. MEC has also certified issues for interest arbitration. The bulk of MEC's work is in the resolution of unfair labor practice cases and in grievance arbitration.

A. Public Employment Relations Commission

1. History

PERC was created in 1975 to administer labor relations statutes for all types of public employers and employees. When PERC was initially established in 1975 it included WSF marine employment relations, which were excluded from PERC's jurisdiction in 1983 when MEC was re-established. WSF marine employment relations are the only public employer-employee relationship not included within PERC's jurisdiction.

2. PERC's Jurisdiction

PERC administers collective bargaining statutes that cover employers and employees employed by cities and counties, K-12 school districts, community colleges, state colleges and universities, state civil service employees, ports, public utility districts, other municipal districts, and employees of certain symphony orchestras. Additionally, PERC administers statutes and processes that apply to other groups of employees who are employed by the governor for collective bargaining purposes only, including individual home care providers, family child care providers, adult family home providers, and language access providers. Approximately 350,000 public employees have collective bargaining rights under statutes administered by PERC.

3. Statutes

PERC issues decisions under nine statutes:

- RCW 28B.52 Community college and technical college faculty
- RCW 41.59 K-12 certified employees
- RCW 41.76 Faculty at public four-year institutions of higher education

- RCW 41.56 All local governments, K-12 classified employees, and selected state operations
- RCW 53.18 Port district employees
- RCW 49.08 Private sector public employment – PERC serves as state mediation agency
- RCW 41.06 State civil service employees
- RCW 41.80 Personnel System Reform Act – collective bargaining for state employees
- RCW 54.04 Public Utility Districts

B. Marine Employees Relations Commission

1. History

The state purchased the ferry system in 1951 and MEC existed from then until 1975 when it was disbanded and its functions placed under the newly formed PERC. MEC was re-established in 1983 on the recommendation of Governor Spellman’s Blue Ribbon Panel following a 1981 wildcat strike.

2. MEC’s Jurisdiction

WSF has 1,765 employees, of whom 1,625 are represented, and 1,590 of the represented employees are marine employees subject to MEC’s jurisdiction.² The employees covered by MEC are subject to nine bargaining agreements.³ Representation is summarized in the table below.

Table 1. Marine Employees

	March 2010	%
Inland Boatmen's Union		
IBU unlicensed deck	516	
IBU terminals	300	
IBU shoregang	17	
IBU information desk	16	
<i>Sub-total IBU</i>	<i>849</i>	<i>53%</i>
Marine Engineers' Beneficial Association		
MEBA licensed engine room	189	
MEBA non-licensed engine room	173	
<i>Sub-total MEBA</i>	<i>362</i>	<i>23%</i>
Masters, Mates, & Pilots		
MM&P licensed deck	163	
MM&P marine ops watch	6	
<i>Sub-total MEBA</i>	<i>169</i>	<i>11%</i>
Puget Sound Metal Trades Council (Metal Trades)		
<i>Eagle Harbor staff</i>	<i>109</i>	<i>7%</i>
Office and Professional Employees International Union (OPEIU)		

² WSF has 23 Merit 1 staff represented by the International Federation of Professional and Technical Engineers and 12 Merit 1 staff represented by the Washington Federation of State Employees.

³ The four groups of employees represented by the IBU are in one agreement. MM&P and MEBA each have two agreements.

	March 2010	%
<i>Administrative staff</i>	54	3%
Ferry Agents, Supervisors, and Project Administrator Association (FASPAA)		
<i>Terminal supervisors</i>	41	3%
Service Employees International Union		
<i>Janitors</i>	6	0%
Total Marine Employees WSF	1,590	

3. Statute

MEC issues decisions under RCW 47.64 – marine employees public employment relations.

C. Public Employment Relations Areas of Responsibility

The public employment relations statutes give MEC and PERC responsibilities in six areas. In each area MEC and PERC have adopted administrative rules that are codified in the Washington Administrative Code (WAC).

With the exception of impasse resolution – where MEC’s responsibility is limited to certifying issues for interest arbitration – and grievance arbitration – where MEC’s responsibility does not include grievance mediation – MEC and PERC’s responsibilities parallel each other.

- *Representation.* Representation cases involve situations where: a) unions petition to represent a group of employees for purposes of collective bargaining; or b) where employees file petitions because they no longer wish to be represented for purposes of collective bargaining. Absent issues that would preclude holding an election, elections are conducted allowing employees to determine whether they wish to be represented.
- *Unit clarification.* To clarify an existing unit means to resolve issues concerning placement of represented or unrepresented positions in existing bargaining units.
- *Unfair labor practices.* Unfair labor practices are prohibited practices of discriminating against an employee or discouraging him/her from joining a union or otherwise exercising his/her rights as an employee and the refusal of the union or employer to bargain in good faith and/or to interfere with that process.
- *Impasse resolution* – An impasse is a deadlock (i.e. labor and management cannot reach agreement) in the collective bargaining process. MEC has responsibility to certify issues for interest arbitration. PERC certifies issues for interest arbitration and also has responsibility for fact finding, grievance and contract mediation, and interest arbitration services which are not MEC’s responsibility.
- *Grievance arbitration.* Grievance arbitration is the arbitration of disagreements that arise under the terms of a collective bargaining agreement.⁴ PERC has responsibility for grievance mediation in addition to grievance arbitration.
- *Non-association/union security.* Non-association, or union security as it is referred to in the MEC administrative code, means the enforcement of collectively bargained membership requirements. If an employee claims a religious exemption to membership in a union, PERC or MEC may allow the employee to give their union dues to a charity.

⁴ MEC has a broader definition of grievance. The MEC WAC defines grievance as a formal statement alleging injury, injustice, or violation of rights granted by rule, statute, collective bargaining agreement, or past practice.

D. MEC Decisions and Certifications

1. Decisions

MEC is primarily involved in resolving charges of unfair labor practice and conducting grievance arbitrations. MEC states that “in many situations, because of our long and unique relationship with the parties, we are asked for advice, which in many cases eliminates grievances or complaints being filed and the issues settled as they should be by the parties themselves.”⁵

Of the 100 MEC decisions⁶ reviewed for this report, 57 were unfair labor practice decisions, 41 grievance arbitration decisions, and 2 unit clarification decisions.

The MEC decisions reviewed did not include any representation decisions. PERC handles a significant number of representation decisions.

There are very few union security/non-association cases. None of the MEC decisions reviewed were union security decisions and PERC has issued only four non-association decisions in the last five years.⁷

Decisions reviewed in this report are listed in Appendix A.

2. Interest Arbitration Certifications

In the 2009-11 biennium the state had nine agreements subject to interest arbitration, of which six were for WSF unions. In five of the six WSF interest arbitration decisions MEC certified the issues and in one the parties waived certification of the issues and mediation. In two of the non-WSF interest arbitrations, PERC certified the issues.

⁵ MEC October 8, 2010 email comment to consultants.

⁶ For the purposes of this report appeals to the commissions were not counted as separate decisions.

⁷ Information provided by PERC staff states that in the last five years there were 19 non-association cases filed, but 15 were withdrawn before a decision was made. Of the four decisions, two were appealed to the Commission.

SECTION III. ORGANIZATIONAL STRUCTURE

This section reviews the organizational structure of PERC and MEC, finding a difference in the role of the commissioners and other factors that affect processing time.

MEC relies on the commissioners – one of whom is required to have a management background, one a labor background, and a chair representing the public - to conduct all adjudicative proceedings, such as hearings and settlement conferences, and to write all decisions. MEC decisions are signed by all three commissioners. The commissioners also have an appellate (i.e. hear appeals from decisions) function.

PERC has three commissioners who must have a background in labor relations. Except in extraordinary circumstances, the commissioners have an appellate function only. PERC's Executive Director and staff are responsible for adjudicative proceedings, such as hearings and settlement conferences, and the staff issue decisions.

Processing times at MEC are affected by this organizational difference. On occasion commissioners are not available to conduct proceedings or delays are caused because new commissioners have not been appointed. These delays cannot be modified by the addition of staff without substantive changes in how MEC works.

Other factors that affect processing time are for PERC its emphasis since 2006 on reducing processing time and eliminating its backlog of decisions. MEC has been affected by legislation mandating changes in the collective bargaining schedule which result in MEC not being able to schedule hearings and conferences on matters other than certifying issues for interest arbitration in August of the bargaining year.

A. Public Employment Relations Commission

1. Commissioners

PERC has three members appointed by the Governor and confirmed by the Senate. Members serve for five years and are eligible for reappointment.

- *Requirements for appointment.* The governor is to be cognizant of the desirability of appointing persons knowledgeable in the area of labor relations in the state to the commission. The Governor designates one member to serve as chairman of the commission (RCW 41.58.010).
- *Current Commissioners.* The three current PERC commissioners are attorneys, each of whom has a background in labor relations.

2. Commission and Staff Roles

- *Commission.* PERC reserves policy and appellate functions to the commission.
- *Staff.* The commission appoints an executive director, with the authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases, to members of the professional staff to make decisions as examiners in unfair labor practice and non-association cases, and to make decisions in representation and unit clarification cases (WAC 391-08-630). PERC staff members also serve as arbitrators in grievance arbitration cases (WAC 391-65-070).
- *Extraordinary circumstances.* With two exceptions, the PERC non-appellate decisions reviewed were made by PERC's professional staff or others appointed by PERC. In the exceptions

(Decisions 10353-PSRA and 10354-PSRA which were issued on the same complaint)⁸, the Commission used an expedited process when the union filed a motion for temporary relief asking PERC to petition the Superior Court to compel the employer to return the parties to the status quo. As part of that expedited process PERC transferred the matter from the examiner to the commission.

- *Affect on processing time.* None of the PERC decisions reviewed made reference to the unavailability of a PERC staff member or commissioner.

3. Other Factors that Affect Processing Time

In 2006 with a change in management PERC placed greater emphasis on reducing processing times. As a consequence PERC does not currently have a backlog of cases.

B. Marine Employees' Commission

1. Commissioners

MEC has three members appointed by the Governor and confirmed by the Senate. Members serve for five years and are eligible for reappointment.

- *Requirements for appointment.* Of the three members of the commission, one is to be appointed from labor, one from industry, and one from the public who has significant knowledge of maritime affairs. The public member serves as chair of the commission (RCW 47.64.280).
- *Current Commissioners.* The current MEC chair has a background as an arbitrator and as a director of labor relations in the private and public sectors. The labor member is a senior business agent for a union and the industry member has a background in the shipping and cruise business and in maritime consulting. None of the three have law degrees. Commissioners who do not have a legal background attend the National Judicial College training program before conducting adjudicative proceedings.
- *Appointment gaps.* There have been significant gaps in making commissioner appointments. MEC states that these gaps have impacted the processing of disputes either because commissioners were not appointed or had not completed their training program.⁹ See Appendix C for a summary of commissioner appointments.

2. Commission and Staff Roles

- *Commission.* The MEC commission, in addition to policy and appellate functions, presides over adjudicative proceedings or appoints one of the commissioners to preside (WAC 316-02-700). The MEC WACs on representation (WAC 316-25-130), unit clarification (WAC 316-35-130), unfair labor practice (WAC 316-45-130), and grievance arbitration (WAC 316-65-070) provide for the appointment of the commission or one of the commissioners to conduct hearings or serve as examiner or arbitrator. All of the MEC decisions reviewed for this report were made by members of the commission or by the commission as a whole, with commissioners themselves conducting settlement conferences, hearings, and other adjudicative procedures.

⁸ PSRA indicates decisions made under RCW 41.80, the Personnel Services Reform Act. Decisions 10353-PSRA finding of fact, conclusions of law, and order issued 4-1-09 and 10354-PSRA an order denying motion issued 4-1-09 were made in response to an unfair labor practices complaint.

⁹ MEC August 31, 2010 letter to consultants.

- *Staff.* The MEC administrative assistant is appointed by the commission. Authority is delegated to the administrative assistant to act in administrative and personnel matters, conduct salary surveys, representation elections, and act as the representative of and for the part-time Commission (WAC 316-02-700). Substantive decisions are not delegated to staff.¹⁰
- *Affect on processing time.* In the decisions reviewed for this report there are references to the unavailability of a commissioner as a reason for re-scheduling a conference or hearing. For example, Decisions 479-MEC and 477-MEC cite hearings that were cancelled because MEC had to use the hearing date for an expedited matter with the hearing continued five months in Decision 479-MEC and the settlement conference one month in Decision 477-MEC.¹¹ Decisions 553-MEC, 566-MEC, and 575-MEC cite commissioner conflict as a reason for re-scheduling a settlement conference or hearing, with the settlement conferences in Decisions 553-MEC and 575-MEC re-scheduled one month later, and the hearing in Decision 566-MEC re-scheduled four months later.¹² Decision 542-MEC cites a delay due to the fact that a commissioner took a new job, with the hearing re-scheduled six months later.¹³

3. Other Factors that Affect Processing Time

MEC states that “a major factor in the MEC’s scheduling of cases has been the 2007 statutory changes to the collective bargaining schedule in RCW 47.64.170. Negotiations begin in February and run through July of the even-numbered years; the schedule becomes more compressed as the summer progresses. Interest arbitrations are scheduled in August. Because MEC serves the same limited clientele, it has to compete with the bargaining schedule for dates to hold proceedings. We cannot schedule settlements/hearings in August because of the intense interest arbitration schedule and the fact that MEC needs to be available to quickly hold a certification hearing if there is a dispute between the parties on impasse issues.”¹⁴

¹⁰ The WAC delegates to the administrative assistant the authority to conduct hearings as permitted by statute and rule, but the statutes and rules do not provide for staff to conduct hearings.

¹¹ Decision 479-MEC is a grievance arbitration decision issued 5-5-06 as an order closing a withdrawn grievance and Decision 477-MEC is an unfair labor practice decision issued 5-4-06 as an order closing a settled complaint.

¹² Decisions 553-MEC, 566-MEC, and 575-MEC are unfair labor practice decisions issued 10-16-09, 9-25-09, and 12-30-09 all as orders closing a settled complaint.

¹³ Decision 542-MEC is a grievance arbitration decision issued 5-30-08 as an order closing a settled grievance.

¹⁴ MEC August 31, 2010 letter to consultants.

SECTION IV. UNFAIR LABOR PRACTICE PROCESSING TIME

This section compares the processing time for PERC and MEC unfair labor practice decisions finding that PERC is faster in processing unfair labor practice complaints, except for the relatively infrequent requests for temporary relief and appeals where MEC is faster.

- *Decisions and orders that are subject to a normal process* (i.e. the matter was not held in abeyance and the decision was not subject to an expedited process). PERC's processing time is four months shorter in the 25 decisions (6 MEC and 19 PERC) reviewed.
- *Decisions where the complaint was held in abeyance* pending the outcome of grievance and arbitration processes. PERC's processing time is two years shorter for the five decisions (four MEC and one PERC) reviewed.
- *Orders closing settled or withdrawn complaints*. PERC's processing time is 7.5 months shorter for the 58 decisions (48 MEC and 10 PERC) reviewed.
- *Temporary relief orders*. MEC's processing time is one month shorter for the two cases reviewed (one each).
- *Appeals*. MEC's processing time is five months shorter for the four decisions reviewed (one MEC and four PERC.)

The primary reason for this difference in processing time is that PERC handles the initial processing of complaints faster than MEC.

- PERC has highly structured deadlines, utilizes a deficiency notice (issued on average within 9 days), amended complaint (must be received within 21 days), and preliminary ruling (issued on average within 14 days of an amended complaint) process to define and limit causes of action, and requires respondents to answer within 21 days. PERC issues orders of dismissal (on average within two months of the receipt of a complaint) where it finds there is no cause of action following the deficiency notice and amended complaint process.
- MEC does not have structured deadlines, issues relatively few deficiency notices (3 issued on average 26 days after the receipt of the complaint), and does not have a preliminary ruling process. MEC found cause of action for all complaints and did not issue any orders of dismissal. Respondent answers are due two weeks prior to the hearing rather than within 21 days, and the respondent answers are extended by MEC if the hearing is delayed.

As a consequence of this initial processing time difference, PERC holds settlement conferences and hearings sooner than MEC. Decision times following the hearing are similar for MEC and PERC.

Another consequence is that, as noted by a 1998 Joint Legislative Audit and Review Committee report, MEC accepts more unfair labor practice complaints, which MEC states is because WSF has, until recently, been committing more unfair labor practices.

Another difference is that PERC defers cases that may also be violations of a collective bargaining process for a shorter period of time even though the PERC WAC allows more circumstances under which PERC can defer such cases.

As discussed in the last section, the unavailability of a commissioner has also lengthened the processing of four MEC unfair labor practice decisions – three by one month and one by four months.

A. Public Employment Relations Commission

1. Decisions Reviewed

The consultants reviewed 60 PERC unfair labor practice decisions, of which 20 are findings of fact, decisions, and orders; 29 were preliminary rulings/orders of partial or total dismissal; one was an order related to temporary relief; and 10 were orders closing withdrawn complaints.¹⁵ The decisions are listed in Appendix A.

Table 2. PERC Unfair Labor Practice Decisions Reviewed

Findings of Fact, Conclusions of Law, and Order	18
Preliminary Ruling /Order of Partial Dismissal	18
Order of Dismissal	10
Order Closing Case	10
Findings of Fact, Conclusions of Law, and Order: Summary Judgment Considered	2
Order of Dismissal: Stipulated Facts in Lieu of Hearing	1
Temporary Relief	1
Total Decisions	60

2. Initial Processing: Receipt through Respondent Answer

When a complaint is received and docketed,¹⁶ it is then reviewed and a determination is made whether there is a cause of action (i.e. if proven the complaint would constitute an unfair labor practice). Where there is a cause of action a preliminary ruling is issued and the respondent must file an answer to the complaint within 21 days. If there is no cause of action for one or more parts of the complaint, a deficiency notice is sent to the complainant. The complainant has 21 days within which to file an amended complaint. When PERC receives an amended complaint it can issue another deficiency notice, an order of dismissal, a preliminary ruling, or a preliminary ruling and order of partial dismissal.

- *Deficiency notice.* The PERC WAC provides for the issuance of a deficiency notice identifying the defects in an unfair labor practice allegation and specifying a due date for filing and service of an amended complaint. If the defects are not cured within 21 days, then the unfair labor practice charge is dismissed. PERC issued 35 deficiency notices in the unfair labor practice decisions reviewed. The deficiency notices were issued on average within nine days of the receipt of a complaint. (See Appendix B for the decisions.)
- *Amended complaint.* The PERC WAC allows 21 days for the filing of an amended complaint (WAC 319-45-110) following a deficiency notice. In the 35 decisions in which PERC issued a deficiency notice, amended complaints were filed in 24, all which were received within 21 days. (See Appendix B for the decisions.)
- *Preliminary ruling.* If PERC determines that the facts as alleged may constitute an unfair labor practice if proven, a preliminary ruling summarizing the allegations is issued. The preliminary ruling limits the causes of action before the examiner and the commission and establishes the due date for the respondent to file an answer (WAC 391-45-110). PERC preliminary rulings were issued on average within six days of the receipt of a complaint or within 14 days of the receipt of an amended complaint when a deficiency notice had been sent. (See Appendix B for the decisions.)

¹⁵ For the purposes of this report, appeals and decisions are counted as one decision.

¹⁶ PERC states that unfair labor practice complaints are docketed within 24 hours of receipt.

- *Order of dismissal.* If PERC determines that the facts as alleged would not constitute an unfair labor practice if proven, then an order of dismissal is issued. The average length of time for the ten orders of dismissals was two months, including one decision in which a second deficiency notice was sent and a second amended complaint received (Decision 10602-PECB).
- *Answer.* PERC requires that an answer from a respondent specifically admit, deny, or explain each of the facts in the complaint (WAC 391-45-210). In accordance with the Washington Administrative Procedures Act, in all of the PERC cases the respondent was given 21 days within which to answer and there was only one decision in which the answer was later than 21 days (Decision 10299-PECB).¹⁷

3. Deferral to Other Processes

There are unfair labor practice complaints that are also alleged to be violations of a collective bargaining agreement. The PERC WAC provides for unfair labor practice allegations to be held in abeyance pending the outcome of related contractual dispute resolution procedures. Deferral to arbitration may be ordered when: employer conduct alleged to constitute an unlawful unilateral change is arguably protected or prohibited by a collective bargaining agreement; the collective bargaining agreement provides for final and binding arbitration of grievances; and there are no procedural impediments to a determination on the merits through the contractual dispute resolution procedures. The PERC WAC provides that the contract interpretation made in contractual proceedings shall be considered binding except where: the contractual procedures were not conducted in a fair and orderly manner; or the contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute (WAC 391-45-110).

One PERC decision, an order of dismissal, included a deferral to arbitration. The decision, a preliminary ruling and deferral of inquiry, was issued six days after the complaint was filed finding a cause of action to exist and providing the employer with an opportunity to file an answer and specify whether deferral to arbitration was requested. The employer answered and sought a deferral to arbitration 14 days later. The decision was deferred for six months and dismissed two days after the arbiter's decision (Decision 10509-PECB).

4. Settlement Conferences/Orders Closing Complaint

Settlement conferences are conducted by PERC but are not part of the decision file. The PERC WAC states that for settlement conferences on substantive issues: a separate case number shall be assigned with all files and papers kept separate from those of the unfair labor practice proceedings; that a commission staff member other than the assigned examiner shall conduct the settlement conference; that the conference must be held in advance of the scheduled hearing date; and that during the settlement conference the parties will be encouraged to resolve the unfair labor practice on factual and legal grounds including precedent on the particular subject (WAC 391-45-260).

PERC states that they have an approximately 70 percent success rate in settling cases.

PERC issues orders closing a withdrawn complaint, which also refers to orders closing a settled complaint. The PERC orders closing a complaint took on average 4.5 months.

¹⁷ Decision 10299-PECB is a case settled under RCW 41.56 Public Employees Collective Bargaining Act. In this case the respondent filed an answer on 7-2-08 in response to a 5-20-08 preliminary ruling. The union filed for a default judgment, which was denied 1.5 months after the filing of the petition.

5. Hearings and Post Hearing Briefs

Hearings were held in 18 decisions in which PERC issued a finding of fact, conclusions of law, and order pursuant to a normal (i.e. non-expedited) process. The hearings were conducted within 1.5 to six months of the complaint being filed. (See Appendix B for the decisions.)

PERC accepts post-hearing briefs, limiting the length of briefs to 25 pages (WAC 391-45-290). Six of the PERC findings of fact, conclusions of law and orders provide dates on which post-hearing briefs were filed, which were from 3 weeks to 2 months after the hearing. (See Appendix B for the decisions.)

6. Decision

In the 18 decisions in which PERC issued a finding of fact, conclusions of law, and order pursuant to a normal (i.e. non-expedited) process and a hearing was held, the time between the hearing and the issuance of the decision and order ranged from 1.5 to seven months. (See Appendix B for a list of the decisions.)

7. Expedited Processes

The PERC decisions include four in which an expedited process was used: one was a denial of a request for temporary relief; two were summary judgments; and one stipulated facts in lieu of hearing.

- *Order relating to temporary relief.* In one decision PERC denied a motion seeking temporary relief. (In temporary relief cases the complainant requests the commission to pursue action in Superior Court). The unfair labor practice manager issued a preliminary ruling within five days of receipt of the complaint stating that there was a cause of action. One day after the preliminary ruling, the union filed a motion for temporary relief asking PERC to petition the Superior Court to compel the employer to return the parties to the status quo and on the next day the examiner requested the employer to respond within nine days. The full commission used its authority 12 days after the motion for temporary relief was filed to waive the unfair labor practice procedures and to direct the parties to prepare stipulated facts and file cross-motions for summary judgment. An expedited briefing schedule was established and the matter was transferred from the examiner to the commission itself. The decision was issued three weeks after the commission meeting (Decision 10353-PSRA, which also included a second decision denying the motion for temporary relief (Decision 10354-PSRA).
- *Summary judgment.* Requests for summary judgment were considered in two of the cases in which PERC issued findings of fact, conclusions of law, and orders. In one case, the request for summary judgment was made two months after the complaint, with the response and cross motions received three weeks later, the reply three days later, and a conference call held five days later during which the parties agreed to jointly waive the hearing and have the case decided as a matter of law. From the waiver to the decision, 8.5 months elapsed (Decision 10533-PECB). In another decision, the request for summary judgment was granted and briefs filed within six weeks of the filing of the complaint. A decision was rendered two weeks later and upheld by the commission on appeal two months later (Decision 10313-PECB).
- *Stipulated facts in lieu of hearing.* In one case where the respondent failed to make a timely answer (i.e. within 21 days) the union filed for a default judgment, which was denied 1.5 months after the filing of the complaint. One week later the union amended the complaint and one week later the parties jointly requested that the examiner accept stipulated facts in lieu of a hearing. Briefs were filed one month later and the decision following the briefs took four months (Decision 10299-PECB).

8. Appeals

The PERC WAC allows for appeals from the parties but does not allow for appeals on the commission's own motion (WAC 391-45-350). Appeals to the commission were made in two of the decisions in which PERC issued findings of fact, conclusions of law and order. One of the cases was a summary judgment in which the commission acted in two months (Decision 10313-A PECB). In the other decision, the appeal decision was seven months after the examiner's decision (Decision 10280-A-PECB). Another appeal was filed in an order of dismissal. The order of dismissal was upheld by the commission 12 months after the examiner's decision (Decision 10267-A-PECB).

B. Marine Employees' Commission

1. Decisions Reviewed

The consultants reviewed 57 MEC unfair labor practice decisions, of which seven are decisions and orders; one an order of dismissal; 38 orders closing a settled complaint; 10 orders closing a withdrawn complaint, and one order related to temporary relief.

Table 3. MEC Unfair Labor Practice Decisions Reviewed

Decisions and Order	7
Order of Dismissal	1
Orders Closing a Settled Complaint	38
Orders Closing a Withdrawn Complaint	10
Temporary Relief	1
Total	57

2. Initial Processing: Receipt through Respondent Answer

When a complaint is received, a commissioner is assigned to the complaint¹⁸. The MEC unfair labor practice WAC provides for the assigned commissioner or the commission to determine whether the facts as alleged would constitute an unfair labor practice. MEC WAC 316-02-630, rules of practice and procedure, states that within 30 days of the receipt of an application, the commission shall notify the complainant, petitioner, or grievant of any obvious error or omissions and request any additional information required to make an initial determination.

- *Deficiency notice.* MEC makes limited use of the deficiency notice process, issuing three in the 57 decisions reviewed. Deficiency notices were issued on average within 26 days of the receipt of the complaint. The deficiency notice process is not referenced in the MEC unfair labor practice WAC (WAC 316-45-110).¹⁹ In two decisions, MEC requested an amendment to the complaint (Decisions 527-MEC and 551-MEC) and in the other MEC requested the complainant to clarify the basis for the charge or withdraw and refile the complaint as a grievance (Decision 548-MEC). The notice of deficiency was made in two days following the complaint in Decision 527-MEC and in 2 months in Decision 551-MEC. In Decision 548-MEC, the order to withdraw or refile was issued 17 days after receipt of the complaint and MEC issued an order to show cause

¹⁸ MEC states that unfair labor practice complaints are docketed within 24 hours of receipt.

¹⁹ MEC WAC 316-02-630, rules of practice and procedure, states that within 30 days of the receipt of an application, the Commission shall notify the complainant, petitioner, or grievant of any obvious error or omissions and request any additional information required to make an initial determination. The MEC unfair labor practice WAC states that the commission or the assigned commissioner will determine whether the facts as alleged may constitute an unfair labor practice with no time period provided (WAC 316-45-110).

giving the union a deadline to file a grievance five months later when it had not received a response from the union.

- *Cases accepted.* The Joint Legislative Audit and Review Committee's 1998 Washington State Ferries Performance Audit noted that PERC has a very detailed process to determine whether an unfair labor practice charge has sufficient status to qualify as an unfair labor practice and that MEC had no such detailed process which affects the number of unfair labor practice charges that are accepted and processed. "The MEC has not applied a uniform and neutral approach to dispute resolution as evidenced by the extremely high number of charges filed and accepted by MEC" (page 4-14). The MEC states that "many of the cases filed with the MEC as unfair labor practice complaints were due to WSF making unilateral changes in terms and conditions of employment for groups of employees, without discussion with the unions, or because WSF failed to provide information necessary for the administration of the agreement, in violation of RCW 47.64. Recent improvements in WSF's labor relations and efforts to provide information and improve communication should mitigate the filing of unfair labor practice complaints by the unions."²⁰
- *Amended complaint.* In the two instances in which MEC requested an amended complaint, the amended complaint was received within eight days.
- *Preliminary ruling.* MEC does not have a preliminary ruling process.
- *Order of dismissal.* MEC issued one order of dismissal, which was not part of the initial processing of the decision. In Decision 552-MEC, a settlement conference was conducted two months after the case was filed at which the parties agreed to bargain the matter. Five months later WSF made a motion to dismiss the matter, the complainant accepted the motion one month later, and 1.5 months later MEC issued the order of dismissal. In one MEC decision and order MEC decided that the complaint did not rise to the level of an unfair labor practice. The decision took nine months from the filing of the complaint and was not based on the initial review of the cause of action (MEC Decision 560).
- *Answer.* MEC requires that an answer from a respondent specifically admit, deny, or explain each of the facts in the complaint (WAC 316-45-210). The MEC WAC states that the answer must be received not less than ten (10) days before the date set for hearing (WAC 316-45-170). MEC states that "they usually schedule the receipt of briefs two weeks prior to the hearing at the request of the parties years ago. If the hearing is continued, the answer date is as well."²¹ Five of the seven cases in which MEC issued a decision and order provide a date on which WSF answered the complaint. The WSF response was between 2 and 7 months after the filing.²²

3. Deferral to Other Processes

There are unfair labor practices that are also alleged to be violations of a collective bargaining agreement. The MEC WAC provides that when an unfair labor practice allegation is also alleged to be a violation of a collective bargaining agreement and is being actively pursued through grievance and arbitration proceedings, the commission may hold the allegation in abeyance pending the outcome. If the commission determines that the grievance and arbitration procedure has satisfactorily resolved the entire matter or any portion of it, the commission may defer to that decision and dismiss the entire unfair labor practice complaint or that portion of it that has not been resolved to the satisfaction of the

²⁰ MEC August 31, 2010 letter to consultants.

²¹ MEC August 31, 2010 letter to consultants.

²² Decisions 550-MEC 1.5 months, 572-MEC 3 months, 468-MEC and 560-MEC 5 months, and 511-MEC 7 months.

commission. Otherwise the commission will resume processing the unfair labor practice complaint or any portion of it that has not been resolved to the satisfaction of the commission (WAC 316-45-020).

In three decisions the case was held in abeyance pending negotiations or arbitration, one for six months (Decision 493-MEC order closing a settled complaint), one for 20 months (Decision 484-MEC decision and order), and one for 34 months (Decision 548-MEC order closing a withdrawn complaint).

4. Settlement Conferences/Orders Closing a Settled or Withdrawn Complaint

Settlement conferences are conducted by MEC at which the parties are encouraged to resolve the unfair labor practice complaint.

MEC states that they have a 65 percent success rate in settling cases in the 2005-10 time period.

- *Decisions and orders.* Four settlement conferences were conducted as part of one MEC order and decision with the first conference two months after the complaint was filed (Decision 468-MEC). Three conferences were conducted in another decision, with the first conference occurring 12 days after the complaint was filed (Decision 484-MEC). Two conferences were conducted in another decision and award (Decision 550-MEC), and one conference was conducted in the other four decisions and awards.
- *Order closing a settled complaint.* Settlement conferences were conducted in 36 of the 38 cases in which MEC issued an order closing a settled complaint, with 28 cases having one conference, seven two conferences, and one three conferences. The initial conference in these 36 decisions was held from one week to eight months following the filing of the complaint, with an average of 3.5 months. In 13 of the 32 decisions the matter was settled during the conference. In the other 25 orders closing a settled complaint decisions, the matter was settled at some other point in the process. MEC regards all 36 cases in which a settlement conference was conducted as being cases in which MEC contributed to the settlement.
- *Orders closing a withdrawn complaint.* Settlement conferences were conducted in four of the ten decisions issued as orders closing a withdrawn complaint, with two cases having one conference and two (2) two conferences. The initial conferences were conducted from one to three months following the filing of the complaint. (See Appendix B for the decisions)

5. Hearings and Post Hearing Briefs

MEC conducted hearings in eight of the unfair labor practice decisions, including all seven in which it issued a decision and order and one in which it issued an order closing a settled complaint. In the seven decisions and orders the time between the filing of the complaint or consolidation and the hearing ranged from 26 months in a case in which the matter was held in abeyance pending negotiations (Decision 484-MEC) to two months (Decision 550-MEC). Excluding the case that was held in abeyance, the longest time between the filing and the hearing was 17 months (Decisions 468-MEC and 572-MEC). In the order closing a settled complaint, the hearing was conducted eight months after the complaint was filed and the case was settled after the hearing (Decision 467-MEC).

MEC accepts post-hearing briefs, which are not limited in length. MEC states that two months for filing of briefs is normal, with transcripts received three to four weeks after the hearing and briefs three to four weeks after that. They also note that the parties frequently request an extension of the briefing filing date.²³ One MEC decision and order provides the date on which post-hearing briefs were filed, which was two months after the hearing (Decision 572-MEC).

²³ MEC August 31, 2010 letter to consultants.

6. Decision

In cases in which MEC held hearings, the time between the hearing and the issuance of a decision and order ranged from three to nine months.²⁴

7. Expedited Processes

MEC had two decisions that use expedited procedures: one was an order related to temporary relief; and the other was a request by a party for an expedited decision. MEC processes also allow for summary judgments and stipulated facts, but none of the decisions reviewed used those procedures.

- *Orders related to temporary relief.* MEC Decision 567, an order granting OPEIU's motion to seek temporary relief, was granted within nine working days of the petition being filed. MEC granted the union's request to have MEC seek injunctive relief in Superior Court to restrain WSF from moving the WSF payroll function to Olympia until administrative proceedings on a MEC case were completed.
- *Request for expedited procedure.* The total elapsed time from the filing of the complaint to the order closing a settled complaint was one week in a decision in which the union filed a request for an expedited decision and agreement was reached at the settlement conference (Decision 475-MEC).

8. Appeals

The MEC WAC allows the commission to review decisions on appeal from the parties or on the commission's own motion (WAC 316-45-350). An appeal was filed in one MEC decision, which was a request for reconsideration of the remedy in a MEC decision and order. The commission issued its order upholding the decision within one month of the appeal (Decision 484-MEC Supplemental).

C. Comparison PERC and MEC

1. Process Step Times

The table below summarizes the differences between PERC and MEC in the rules, where applicable, and the time it takes at each step of the unfair labor practice process.

- *Initial processing.* PERC handles the initial processing of complaints faster than MEC because PERC has highly structured deadlines, utilizes a deficiency notice (issued on average within 9 days), amended complaint (must be received within 21 days), and preliminary ruling (issued on average within 14 days of an amended complaint) process to define and limit causes of action, and requires respondents to answer within 21 days. PERC issues orders of dismissal (on average within two months of the receipt of a complaint) where it finds there is no cause of action following the deficiency notice and amended complaint process. MEC does not have structured deadlines, issues relatively few deficiency notices (3 issued on average 26 days after the receipt of the complaint), and does not have a preliminary ruling process. In their initial processing MEC found cause of action for all complaints and did not issue any orders of dismissal. Respondent answers are due two weeks prior to the hearing rather than within 21 days, and the respondent answers are extended by MEC if the hearing is delayed.
- *Deferral to other processes.* PERC and MEC can defer unfair labor practice complaints that are also alleged to be violations of a collective bargaining agreement. In the decisions reviewed

²⁴ Decisions 468-MEC 9 months, 484-MEC 4 months 560-MEC 4 months, 511-MEC 4 months, 572-MEC 3 months, and 465-MEC 4 months.

PERC deferred the matter in one decision for six months in a decision that took a total of 7.5 months. MEC deferred the matter in four decisions for 6 to 34 months in decisions that took an average of three years. PERC deferred less frequently and for a shorter period of time even though the PERC WAC provides for more circumstances under which it can defer action - if the employer conduct is arguably protected or prohibited by a collective bargaining agreement process, the collective bargaining agreement provides for final and binding arbitration of grievances, and where there are no procedural impediments versus under the MEC WAC where the grievance or arbitration must be being actively pursued. Once deferred, under the PERC WAC the collective bargaining grievance and arbitration process is binding except in extraordinary conditions. Under the MEC WAC, the results of a grievance or arbitration process are only binding if the commission determines that the grievance and arbitration process has satisfactorily resolved the issue.

- *Settlement conferences and orders closing settled or withdrawn cases.* The faster initial processing time for PERC means that it conducts at least an initial settlement conference sooner than MEC. An initial settlement conference was conducted by PERC on average 30 days from the receipt of the complaint in the 10 cases in which it issued an order closing a settled or withdrawn case. MEC conducted an initial settlement conference on average 4.5 months from the receipt of a complaint in the 48 cases in which it issued an order closing a settled or withdrawn case.
- *Hearings and post-hearing briefs.* PERC, again because of the faster initial process, conducts the first hearing in a case sooner than MEC. Post-hearing briefs are received at around the same time in the PERC and MEC processes. In 18 decisions in which PERC held a hearing, and the decision was not part of an expedited process, the first hearing was held from 1.5 to six months after the receipt of the complaint and post hearing briefs from two weeks to two months later. MEC conducted hearings in eight decisions, with the first hearing from two to 17 months after the receipt of the complaint. Post hearing briefs are received by MEC generally two months after the hearing.
- *Decision.* PERC and MEC times for arriving at a decision following a hearing are similar, with PERC decisions 1.5 to seven months following the hearing and MEC decisions three to nine months following the hearing.
- *Expedited processes.* MEC and PERC each had one decision in which they considered a request for temporary relief. MEC was faster than PERC, issuing an order granting temporary relief nine days after the receipt of the request while PERC took five weeks to issue an order denying the motion.
- *Appeals.* MEC, perhaps because the commissioners have both an adjudicative and an appellate role, was faster than PERC in making appeal decisions. PERC had three appeals that on average were made seven months after the initial decision. MEC had one appeal that took one month.

Table 4. Comparison of Unfair Labor Practice Process Steps

	PERC	MEC
Initial Processing: Receipt through Respondent Answer		
Deficiency Notice	<ul style="list-style-type: none"> 35 of 61 decisions Average days - 9 	<ul style="list-style-type: none"> 3 of 57 decisions Average days - 26
Amended Complaint	<ul style="list-style-type: none"> 24 of 35 deficiency notice Within 21 days 	<ul style="list-style-type: none"> 2 of 3 deficiency notice requested Within 8 days
Preliminary Ruling	<ul style="list-style-type: none"> Within 6 days if no deficiency notice With 14 days of amended complaint 	n/a
Order of Dismissal	<ul style="list-style-type: none"> Average months - 2 	n/a
Answer	<ul style="list-style-type: none"> Within 21 days (except one late) 	<ul style="list-style-type: none"> Two weeks prior to hearing
Deferral to Other Processes		
When	<ul style="list-style-type: none"> Employer conduct is arguably subject to a collective bargaining agreement (cba). CBA provides for final and binding arbitration of grievance. No procedural impediments 	<ul style="list-style-type: none"> When being actively pursued in a grievance process.
Resolved	Binding unless proceedings were: <ul style="list-style-type: none"> Not conducted in a fair and orderly manner. Results repugnant to purposes and policies of the applicable collective bargaining statute. 	<ul style="list-style-type: none"> If Commission determines that the grievance and arbitration has satisfactorily resolved the matter.
Decision Time	<ul style="list-style-type: none"> One decision Decision time 7.5 months Held in abeyance 6 months 	<ul style="list-style-type: none"> Three decisions Decision average time 3 years. Held in abeyance 6 months to 34 months.
Settlement Conferences/Orders Closing Settled or Withdrawn Complaint		
Conference	<ul style="list-style-type: none"> Initial conference Average 30 days following complaint 	<ul style="list-style-type: none"> Initial conference Average 3.5 months following receipt
Order	<ul style="list-style-type: none"> 10 orders Average time 4.5 months 	<ul style="list-style-type: none"> 48 orders Average time 12 months
Hearings and Post-Hearing Briefs		
Hearing	<ul style="list-style-type: none"> 18 decisions Range: 1.5 to 6 months after receipt 	<ul style="list-style-type: none"> 8 decisions Range: 2 to 17 months from receipt
Briefs	<ul style="list-style-type: none"> Range: 2 weeks to 2 months 	<ul style="list-style-type: none"> 2 months
Decision		
Hearing to Decision	<ul style="list-style-type: none"> 1.5 to 7 months 	<ul style="list-style-type: none"> 3 to 9 months
Expedited Processes		
Temporary Relief	<ul style="list-style-type: none"> 1 decision 5 weeks 	<ul style="list-style-type: none"> 1 decision 9 days
Appeals		
Who	<ul style="list-style-type: none"> Parties 	<ul style="list-style-type: none"> Parties or Commission Itself
Time	<ul style="list-style-type: none"> 3 appeals Average 7 months 	<ul style="list-style-type: none"> One appeal One month

2. Total Processing Time Comparison

The total elapsed time from receipt of a complaint to a decision is shorter in the PERC process than in the MEC process for the most common decisions.

- *Decisions and orders that are subject to a normal process* (i.e. the matter was not held in abeyance and the decision was not subject to an expedited process) by 4 months.
- *Decisions where the complaint was held in abeyance* pending the outcome of grievance and arbitration processes by two years.
- *Orders closing complaints* by 7.5 months.

MEC is faster than PERC in processing temporary relief orders and appeals, which are infrequent decisions.

- *Temporary relief orders* by 1 month.
- *Appeals* by 5 months.

Table 5. Unfair Labor Practice Decisions Total Elapsed Time Comparison

Decision Type	MEC		PERC	
	# of decisions	average time	# of decisions	average time
Decisions & orders normal process	6	13 months	18	9 months
Decisions where complaint held in abeyance	4	3 years	1	7.5 months
Temporary relief	1	9 days	1	5 weeks
Order closing withdrawn/settled complaints	48	12 months	10	4.5 months
Appeals	1	1 month	3	6 months

a. Decisions and Orders

In the six decisions in which MEC issued a decision and order and the matter had not been held in abeyance, the total elapsed time from receipt of the complaint to the decision ranged from five months in a case in which MEC issued an order based on a finding that WSF failed to provide proof of past practice or bargaining (Decision 550-MEC) to 20 months (Decision 572-MEC) and the average length of time was 13 months.

In the 18 PERC findings of fact, conclusions of law, and orders where the matter had not been held in abeyance, the total elapsed time from receipt of a complaint to the order ranged from three months in a case in which the hearing was held 1.5 months after the complaint was filed and the decision was issued 1.5 months after the hearing (Decision 10328-PECB) to 14 months in a case in which a hearing was held 4 months after the complaint was filed and the order was issued 10 months after the hearing (Decision 10546—PECB). The average total length of time from the filing of the complaint to a decision was 9 months.

See Appendix B for a list of the decisions.

b. Matter Held in Abeyance

The PERC case in which the unfair labor practice complaint was held in abeyance pending the outcome of arbitration had a total processing time of 7.5 months (Decision 10509-PECB). The four decisions in which MEC held the complaint in abeyance took on average three years.²⁵

c. Temporary Relief

In the two cases in which the Commissions responded to motions for temporary relief, MEC acted within 9 days (Decision 567-MEC) which was faster than PERC which acted within 5 weeks of the filing for temporary relief (Decision 10354-PSRA).

d. Orders Closing a Complaint

The PERC orders closing a withdrawn or settled complaint took on average 4.5 months and MEC 12 months. See Appendix B for a list of decisions.

e. Appeals

The MEC appellate decision, which was a request to reconsider the remedy, was issued three weeks after the appeal was filed (Decision 484-MEC Supplement). The three PERC appeals took on average 6 months.²⁶

²⁵ Decision 484-MEC a decision and order took 2.5 years, decisions 493-MEC and 529-MEC which were orders closing a settled complaint took 3 years, and decision 548-MEC took 3.8 years.

²⁶ Decision 10313-A-PECB took 2 months, decision 10280-A-PECB 7 months, and decision 10267-A-PECB 12 months.

SECTION V. GRIEVANCE ARBITRATION PROCESSING TIME

This section compares the processing time for PERC and MEC grievance arbitration decisions finding that:

- *Changes in collective bargaining grievance procedures* are likely to reduce the number of grievance arbitrations handled by MEC.
- *There are differences in grievance arbitration procedures.* MEC conducts settlement conferences and allows appeals of the arbiters' decisions. PERC, which provides grievance mediation services that are not part of MEC's responsibilities, does not conduct settlement conferences as part of its grievance arbitration procedures and does not allow the arbiters' decisions to be appealed to the commission. Part of the difference in procedures may be because MEC has a much broader definition of grievance arbitration. PERC defines grievance arbitration as the arbitration of disputes under a collective bargaining agreement. MEC defines grievance arbitration as a formal statement alleging injury, injustice, or violation of rights granted by rule, statute, collective bargaining agreement, or past practice.
- *PERC has a faster processing time for grievance arbitrations awards.* The average time for a PERC grievance arbitration is nine months and for MEC is 22.5 months. MEC has a longer processing time because it is more willing than PERC to grant employer and union requests to defer action, continuance of hearings, and extensions of time to file briefs. PERC does not allow the parties to extend grievance arbitration procedures, noting that if a grievance is important enough to file it is important to settle it promptly.

A. Marine Employees' Commission

1. Collective Bargaining Grievance Procedure Modification

The number of grievance arbitrations decided by MEC in the future will be affected by changes in the WSF collective bargaining grievance procedures, which were modified starting with the 2007-09 biennium agreements. The revised grievance procedure for WSF collective bargaining agreements has four steps. The first two steps are review by increasing levels of WSF management. The third step (fourth in the case of the MM&P which has a union delegate committee as the third step) is a pre-arbitration review meeting. Pre-arbitration review meetings may be requested by the union, with Office of Financial Management/Labor Relations Office deciding whether the request will be granted. If a request for a pre-arbitration review meeting is denied or the grievance is not resolved at the pre-arbitration meeting, the union may file a grievance with the Federal Mediation and Conciliation Service. Alternatively, under the IBU, MEBA, MM&P, Metal Trades and FASPAA agreements, the parties may by mutual agreement refer the matter to the MEC. The collective bargaining agreements with OPEIU and SEIU do not provide an option to refer the matter to the MEC.

The IBU agreement has a unique provision allowing for alternate union/employer selection of the Federal Mediation and Conciliation Service or MEC. "If a grievance has been processed through Step 4 of the grievance procedure and the parties have not resolved such grievance the Union may select either the Federal Mediation and Conciliation Service or the MEC to settle the dispute. This will apply to the first five (5) grievances filed after July 1, 2009. The next five (5) grievances not resolved at Step 4, in which the Union seeks arbitration to settle the dispute, the Employer will select either the Federal Mediation and Conciliation Service or MEC. This approach will continue with the Union selecting between the Federal Mediation and Conciliation Service or the MEC on the next five (5) consecutive grievances, followed by the Employer selecting on the next five (5) grievances, unresolved at Step 4 and

the Union desires to proceed to arbitration. Grievances settled between the parties, prior to an arbitration award, will not count as one of the five (5) selections by either party.” (Section 14.03 C Note)

Of the 41 grievance arbitration decisions reviewed in this report, 7 were decisions made since the 2007-09 biennium. Six (6) of the 7 decisions were in grievance arbitrations filed by IBU.

WAC Chapter 316-65 is the grievance arbitration code for MEC and Chapter 391-65 is for PERC.

2. Grievance Definition

The MEC WAC defines grievance as a formal statement alleging injury, injustice, or violation of rights granted by rule, statute, collective bargaining agreement, or past practice.

3. Decisions Reviewed

The consultants reviewed 41 MEC grievance arbitration decisions: seven decisions and awards; 23 orders closing a settled grievance; and 11 orders closing a withdrawn grievance.

Table 6. MEC Grievance Arbitration Decisions Reviewed

Decisions and awards	7
Orders closing a settled grievance	23
Orders closing a withdrawn grievance	11
Total	41

4. Settlement Conference/Order Closing Grievances

The MEC WAC provides for the conduct of settlement conferences in grievance arbitrations (WAC 316-65-515). Settlement conferences were conducted in 30 of the 41 MEC grievance arbitration decisions.

- *Orders closing a settled grievance.* Settlement conferences were conducted in 22 of the 23 decision where MEC issued an order closing a settled grievance. The first settlement conference was conducted within one to five months following the request for grievance arbitration, with the average being 2.5 months. Five of the orders closing a settled grievance were issued based on a resolution of the issues during the settlement conference and one case was settled by the parties upon arrival at the hearing. In the other 18 decisions, the settlement was reached by the parties outside of the settlement conference.
- *Order closing a withdrawn grievance.* Settlement conferences were held in seven of the 11 orders closing a withdrawn grievance, with the first conference held from two weeks (Decision 501-MEC) to four months (Decision 519-MEC) after receiving the request for grievance arbitration.
- *Award.* One of the award decisions cites three settlement conferences, the first of which took place within three months of the request (Decision 537-MEC).

5. Hearing

- *Order closing a settled grievance.* Hearings were scheduled in 23 of the orders closing a settled grievance decisions, but a hearing was conducted in only one of the decisions and in that decision the parties arrived at the hearing with a settlement (Decision 505-MEC). In the other

orders closing a settled grievance decisions the hearings were rescheduled, cancelled, or converted to settlement conferences.

- *Award.* At least one hearing was conducted in six of the seven decisions and awards issued by MEC. Hearings were conducted 4.5 months after the filing (Decision 563-MEC) to 28.5 months after the filing in a decision where three hearings were cancelled before the first hearing was conducted (Decision 537-MEC).

6. Appeal

Awards made under the MEC WAC are subject to review by the Commission, upon the commission's own motion or on the petition of any party, made within 20 days of the award (WAC 316-65-550). The Commission upon appeal may request additional oral arguments prior to making its decisions (WAC 316-65-560).

In three of the seven awards made by MEC a request for clarification, reconsideration of penalty, or reconsideration was made to the Commission. The Commission made a decision affirming the decision within one month of the appeals (Decisions 518-A-MEC, 563-A-MEC and 537-A-MEC).

B. Public Employment Relations Commission

1. Decisions

The only type of decisions that PERC makes in grievance arbitrations are awards. PERC does not issue orders closing settled or withdrawn grievances. It should be noted that PERC does provide grievance mediation services which are distinct from its grievance arbitration procedures.

The consultants reviewed ten PERC grievance awards.

2. Grievance Arbitration Definition

PERC defines grievance arbitration as the arbitration of disagreements that arise under the terms of a collective bargaining agreement

3. Settlement Conferences

The PERC WAC does not provide for the conduct of settlement conferences in grievance arbitrations.

4. Hearings

Hearings were conducted in nine of the ten PERC awards, with the time between the filing of the petition and the hearing ranging from two months (Case 22990-A-1475 and 22263-A-09-1457) to 11 months (Case 129165-A-05-1408²⁷). See Appendix B for a list of cases.

5. Appeals

Arbitration awards under the PERC WAC are not subject to appeal to the Commission (WAC 391-65-110).

²⁷ PERC notes that this case was filed in FY 2005 prior to management changes that improved processing time.

C. Comparison PERC and MEC

1. Process Step Times

PERC holds hearings and issues awards in grievance arbitrations while MEC conducts settlement conferences, holds hearings, issues awards, and will accept appeals. PERC defines a grievance more narrowly than MEC, limiting it to grievances under a collective bargaining agreement. All of the MEC grievance decisions reviewed were grievances under a collective bargaining agreement, but the difference in the breadth of what is considered a grievance may explain the difference in approach. While PERC provides mediation services, it does not, unlike MEC, conduct settlement conferences as part of grievance arbitration and does not allow appeals of the arbitration award to the commission.

Table 7. Comparison of Grievance Arbitration Process Steps

	PERC	MEC
Settlement Conferences	<ul style="list-style-type: none">• n/a for arbitration• Provides grievance mediation service	<ul style="list-style-type: none">• Conducted in 30 of 41 decisions• 34 closing orders
Hearings	<ul style="list-style-type: none">• Nine hearings• Hearings 2 to 11 months after request	<ul style="list-style-type: none">• Six decisions with hearings• Two decisions with filing dates• Hearing 4.5 & 28.5 months after request
Appeals	<ul style="list-style-type: none">• n/a	<ul style="list-style-type: none">• Appeals from parties or on commission's own motion• Three appeals – decision 1 month

2. Schedule Accommodation

MEC is more willing to accommodate the parties request for schedule modifications than PERC.

MEC states that “at least five of the seven decisions and award cases were drawn out due to:

- Union’s request to defer action on case
- WSF’s need to await and consider arbitration award in similar case with another union
- Multiple settlement conferences held
- Multiple requests for continuance of hearing
- Requests for extension of brief filing date.

The commission encourages the parties to engage in settlement discussions to resolve disputes whenever possible. As long as they indicate they are making progress and want to continue settlement efforts, the commission will defer action on a case, believing that a negotiated settlement is the best possible resolution for the parties.

The commission grants requests for continuance of hearing as long as the opposing party does not object.”²⁸

The PERC Executive Director states that they do not allow the parties to prolong grievance procedures, noting in an interview that if a grievance is important enough to file, it is important enough to settle promptly.

²⁸ MEC August 31, 2010 letter to consultants.

3. Total Processing Time Comparison

The total processing time for MEC decisions and awards ranged from 5 months (Decision 550-MEC) to 28 months (Decision 468-MEC). The average processing time was 22.5 months.

The total elapsed time in the PERC grievance arbitration decisions ranged from 21 months (Award 19165-A-05-1408) to 5 months (Awards 22990-A-1475, 22951-A-10-1473, and 22263-A-1457) with an average processing time of 9 months.

The table below summarizes the processing time.

Table 8. Grievance Arbitration Processing Times

Decision Type	MEC		PERC	
	# of decisions	average time	# of decisions	average time
Awards	7	22.5 months	10	9 months

SECTION VI. UNIT CLARIFICATION PROCESSING TIME

Two of the MEC decisions reviewed were unit clarification decisions. The consultants found that MEC was faster than PERC in the one decision that was an order (the other was an order closing a resolved petition) taking five months to make a decision compared to PERC's average processing time of eight months. The difference is in part because in the MEC decision the hearing was converted to a settlement conference.

A. Marine Employees' Commission

1. Decisions

Two of the MEC decisions reviewed were unit clarification decisions. One was an order and decision and the other an order closing a resolved petition.

2. Settlement Conference

In the order closing a resolved petition, the hearing was converted to a settlement conference which took place five months after the receipt of the petition. MEC informed another union of the petition after the settlement conference and indicated they might have an interest in the position. A second conference was scheduled for four months after the first conference, but the case was resolved and withdrawn before that time (Decision 569-MEC).

3. Hearing

In the case in which MEC issued an order, the hearing took place three months after the petition was filed (Decision 540-MEC).

4. Order

In the case in which MEC issued an order, the order to clarify the bargaining unit was issued 2.5 months after the hearing (Decision 540-MEC).

B. Public Employment Relations Commission

1. Decisions

Ten PERC orders were reviewed.

2. Pre-hearing Conference

Pre-hearing conferences were conducted in three of the ten orders reviewed, each of which was held within one to two months of receiving the petition. One of the pre-hearing conferences resulted in stipulations being filed which was done within 17 working days of the conference and the order clarifying the bargaining unit was filed 21 working days after the stipulations (Decision 10575-PECB). Another pre-hearing conference resulted in the parties agreeing to submit written stipulations in lieu of a hearing. The stipulations were submitted by the parties nine months later and the order was issued within seven working days of receipt of the stipulations (10439-PSRA).²⁹

²⁹ The third decision which included a prehearing conference was 10412-PECB.

3. Hearing

In five of the cases a one day hearing was conducted, with the hearing occurring within two to four months of the receipt of the petition.³⁰ In one decision two cases were combined and had five days of hearings. The hearings were completed within four months of receipt of the amended petition (Decision 10495-PSRA and 10496-PSRA).

4. Order

Orders issued following hearings took from six weeks, in a decision in which the parties agreed to stipulated facts at the hearing (Decision 10483-EDUC) to seven months (Decision 10587-PECB) with an average of four months.³¹

5. Expedited Process

In one decision, PERC issued a show cause order asking why an administrative decision could not be made that the position at issue should be included in the bargaining unit. The show cause order was issued within 12 working days of receipt of the petition, with the order clarifying the bargaining unit issued 21 days later when no response was received. (Decision 10497-EDUC)³²

C. Comparison PERC and MEC

1. Process Step Times

PERC and MEC have similar processes for making unit clarification awards, including a settlement or pre-hearing conference and hearing.

Table 9. Comparison of Unit Clarification Process Steps

	PERC	MEC
Settlement Prehearing Conferences	<ul style="list-style-type: none">• Pre-hearing conference• Conducted in 3 of 10 awards• Conference: 1-2 months after petition	<ul style="list-style-type: none">• Settlement conference• Conducted in one award – hearing converted to a settlement conference• 5 months after receipt of petition
Hearings	<ul style="list-style-type: none">• Six awards had hearings• Hearings: 2-4 months after petition	<ul style="list-style-type: none">• n/a see above

2. Total Processing Time Comparison

The total processing time for MEC's order and decision was five months (Decision 540-MEC). The decision was rendered after the hearing was converted to a settlement conference.

In the ten PERC awards the total elapsed time from receipt of the petition to a decision ranged from six weeks for a case in which PERC issued a show cause order in response to a petition and then, when no response was received from the parties, issued an order clarifying the bargaining unit (Decision 10497-EDUC) to 13 months for two cases that were combined, each of which had an amended petition filed

³⁰ Decisions 10587-PECB 2 months, 10483-EDUC 4 months, 10474-PECB 2.5 months, and 10421-PECB 3 months.

³¹ Decisions 10587-PECB 7 months, 10483-EDUC 6 weeks, 10474-PECB 5.5 months, 10421-PECB 3 months, 10495-PSRA/10496-PSRA 4 months, and 10421-PECB 4 months.

³² EDUC refers to decisions issued under RCW 41.59 the Educational Employment Relations Act covering K-12 certified employees.

four months after the original petition. From the date of the amended petition, 9 months elapsed, which included five days of hearings, before the order clarifying the bargaining unit was issued (Decisions 10495-PSRA and 10496-PSRA). The average total elapsed time from the filing of the petition to the decision was 8 months.

The table below summarizes the processing time.

Table 10. Unit Clarification Processing Times

Decision Type	MEC		PERC	
	# of decisions	average time	# of decisions	average time
MEC decisions & orders /PERC orders	1	5 months	10	8 months

SECTION VII. EXPERTISE

This section discusses the consultants' findings regarding whether PERC has the necessary expertise to administer the grievances and hearings currently administered by MEC.

The consultants conclude that PERC does have the necessary expertise to administer WSF marine employment relations. The consultants' conclusion is based on: 1) a review of the expertise used by MEC in making the unfair labor practice, grievance arbitration, and unit clarification decisions reviewed for this report, and in certifying issues for interest arbitration for the 2009-11 biennium agreements; and 2) PERC's labor relations expertise.

The consultants found that MEC's unfair labor practice, grievance arbitration, and unit clarification decisions and the issues it certifies for interest arbitration:

- *Are based on legal interpretations.* MEC's WAC states that the commission or assigned commissioner may make official notice as evidence of any technical facts within the commissioner's specialized knowledge that have been so noticed. Parties are to be notified. The consultants did not find any notices of specialized knowledge in the MEC decisions. MEC decisions are instead based on legal interpretations including for example: whether the alleged unfair labor practice was a mandatory subject of bargaining; whether the alleged unfair labor practice rose to the level of an unfair labor practice; whether WSF had just cause in terminating an employee; and interpretations of collective bargaining language. The decisions include references to precedents established in previous MEC cases. In one grievance arbitration MEC based its decision on an earlier ruling from the Washington State Court of Appeals. Unit clarifications and certifying issues for interest arbitration are, by their very nature, administrative law decisions. Unit clarification decisions are based on the nature of the petition and employee voting. Certifying issues for interest arbitration involves determining whether the parties have bargained in good faith and are at an impasse.
- *Involve matters that are similar to matters involved in PERC decisions.* The two unit clarification decisions involved administrative staff (a bid administrator and a facility services coordinator). The unfair labor practice and grievance arbitration decisions involved parking, payroll procedures, pay, employee theft, return to work after injury, and scheduling. In two instances in which decisions were made on shipboard staff (i.e. bos'n duties and return of a captain to the fleet) the decisions were not based on the nature of their work but rather on legal concepts (whether there was a unilateral change in an area that is a mandatory subject of collective bargaining and whether there was an obligation to bargain).

PERC staff and commissioners have expertise in labor relations that can be applied to WSF marine employment relations. The professional staff are either attorneys or have degrees in labor relations and the commissioners are attorneys with labor extensive labor relations backgrounds.

A. Expertise

1. Marine Employees' Commission

RCW 47.64 requires the appointment of commissioners representing labor, industry, and one from the public who has a significant knowledge of maritime affairs to the MEC (RCW 47.64.280).

The MEC rules and procedures WAC provides that the commission or assigned commissioner may make official notice as evidence of any judicially cognizable facts, technical facts within the commissioner's specialized knowledge, and codes or standards that have been so noticed. Parties are to be notified either before or during the hearing or by reference in post-hearing reports of findings of the material so

noticed and the sources, including any specific data. The parties are also to be provided with an opportunity to contest the facts and materials (WAC 316-02-040).

The MEC mission statement states that the MEC is to ensure the operation of the ferry system is not disrupted by labor disputes, by providing the specialized attention required to resolve the unique and complex labor relations questions that arise in the operation of the WSF system.

The MEC states: "Maritime expertise has to be considered an asset when resolving cases involving shipboard workers. It gives the examiner/arbitrator insight into aspects of a unique industry that are unknown to people outside the industry. In addition, more than one party has remarked to the Commission that the commissioners' maritime knowledge greatly reduces the time representatives/counsel have to take to explain the facts of the situation when presenting their case before the Commission."³³

2. Public Employment Relations Commission

RCW 41.58.010 requires that the Governor be cognizant of the desirability of appointing persons knowledgeable in the area of labor relations in the state to the PERC (RCW 41.58.010). There is no requirement in statute or in the PERC rules and procedures WAC that requires knowledge other than labor relations expertise of the commissioners or staff to whom substantive authority is delegated. The PERC WAC provides that a multifunctional staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution (WAC 391-08-630).

Of the PERC professional staff, approximately 50 percent are attorneys and the rest have degrees in labor relations.

B. Expertise Used in MEC Unfair Labor Practice Decisions

To determine the expertise used in MEC actions regarding unfair labor practice complaints the consultants focused on the seven (7) unfair labor practice decisions and orders and the 13 instances in which unfair labor practice complaints were resolved during the settlement conferences. The consultants also examined whether the subject matter of the remaining 37 unfair labor practice decisions required maritime affairs expertise.

1. Decisions and Orders

The seven decisions and orders were made in response to unfair labor practice complaints about: employee parking (Decision 484-MEC); payroll procedures (Decision 468-MEC); penalty pay (Decision 465-MEC); calculation of vacation accrual (Decision 572-MEC); Bos'n duties, selection, and duty assignments (Decision 511-MEC); return of a captain to the fleet (Decision 550-MEC); and a Loudermill notice (Decision 560-MEC)³⁴.

a. Mandatory Subject of Bargaining

Six of the seven the decisions were based on the question of whether the action alleged to have been an unfair labor practice was a mandatory subject of bargaining based on past practice.

The commission decisions generally contained language such as this contained in Decision 484-MEC:

³³ MEC August 31, 2010 letter to consultants.

³⁴ Employee rights deriving from a 1985 US Supreme court decision ('Cleveland Board of Education vs. Loudermill') that most public employees have a property right in their jobs. An employee cannot be dismissed without due process involving pre-termination hearing that gives them the opportunity to present their side of the story

“In deciding whether an employer has violated its duty to bargain in circumstances like those presented here, the Commission must decide whether the employer has made a unilateral change in a mandatory subject of bargaining. See *IBU v. WSF*, 429-MEC (2004). The contest issue in this case is whether there was a change to an established past practice allowing employees free parking in the dock. We have held repeatedly that the party asserting a unilateral change has the burden to show either a contractual provision or “a clear and consistent practice.” *IBU v WSF*, 429-MEC (2004). Furthermore, a past practice must be “unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed practice or policy accepted by both parties.” *IBU v WSF*, 183-MEC (1997).”

Specific decisions are:

- *Employee parking (Decision 484-MEC)*. The decision regarding employee parking at the Clinton terminal was based on the failure of WSF to bargain the impact of parking that was lost when the terminal lot was reconstructed.
- *Payroll procedures (Decision 468-MEC)*. The decision regarding the implementation of a new payroll manual without bargaining was based on whether the issues were a mandatory subject of bargaining.
- *Penalty pay (Decision 465-MEC)*. The decision regarding a new policy concerning penalty pay for sewage spills was based on whether the actions of WSF in verifying that a sewage spill had occurred before paying penalty pay were a violation of an earlier MEC order.
- *Calculation of vacation accrual (Decision 572-MEC)*. The decision regarding whether WSF had committed an unfair labor practice in the calculation of retroactive vacation pay pursuant to another MEC decision was based on the definition of continuous employment and the fact that the definition cannot be unilaterally changed or modified.
- *Bos’n duties, selection, and duty assignments (Decision 511-MEC)*. The decision was based on whether WSF had made a unilateral change in an area that was a mandatory subject of bargaining.
- *Return of a captain to the fleet (Decision 550-MEC)*. The decision was based on whether there is an obligation to bargain over the retention and application of seniority under the collective bargaining agreement.

a. Does the issue rise to the level of an unfair labor practice

The seventh decision, Decision 560-MEC, was based on the question of whether the failure to issue a Loudermill notice within agreed upon time frame was an unfair labor practice, concluding that it did not rise to the level of an unfair labor practice.

2. Orders Closing a Settled Complaint: Settled during Settlement Conference

The subject matter of the 13 complaints that were settled during a settlement conference are:

- Consolidation of interest arbitrations (Decision 475-MEC)
- Limiting the size of the bargaining team (Decision 541-MEC)
- Processing maintenance and cure payments (Decision 539-MEC)
- Support of a rival union (Decision 470-MEC)
- Harassing new employees during union no overtime campaign (Decision 514-MEC)
- Assigning dispatch and crew dispatch coordinator duties to non-union staff (Decision 526-MEC)
- Loudermill hearing (Decision 481-MEC)
- Requirements for sick leave use (Decision 469-MEC)

- Seniority accrual while on medical leave (Decision 557-MEC)
- Terminal supervisors perform IBU jurisdictional work (Decision 490-MEC)
- Threatening letter from WSDOT attorney to employee attorney (Decision 544-MEC)
- Employee parking signage (Decision 553-MEC)
- Disciplining employees for smoking (Decision 554-MEC)

3. Other MEC Unfair Labor Practice Disputes

The consultants review of the other 37 unfair labor practice decisions, 10 of which were orders closing a withdrawn complaint and 27 of which were orders closing a settled complaint where the settlement was not made at the settlement conference. None of the 37 decisions appear to have involved matters that require specialized maritime affairs knowledge.

4. Consultants Conclusion

The consultants conclude that PERC has the expertise to have made the unfair labor practice decisions reviewed for this report. The decisions were based on legal interpretations and involved matters that did not require specialized maritime knowledge.

C. Expertise Used in MEC Grievance Arbitration Decisions

To determine the expertise used in MEC actions regarding grievance arbitrations the consultants focused on the seven (7) grievance arbitration decisions and awards. The consultants also examined whether the subject matter of the remaining 34 grievance arbitration decisions required expert maritime affairs knowledge.

1. Decisions and Awards

The seven arbitration awards were made in response to requests for arbitration regarding: employee theft from a terminal booth (Decision 518-MEC); watch turnover pay (Decision 563-MEC); process and pay procedures (Decisions 473-MEC, 506-MEC, and 537-MEC); engine room schedule (Decision 491-MEC); and return to work after injury (Decision 536-MEC).

In one award, the decision was based on the legal concept of just cause and five the awards were based on interpretation of collective bargaining agreement language. The seventh decision was based on an earlier decision by the Washington State Court of Appeals.

a. Just Cause

Decision 518-MEC was based on whether WSF provided just cause for the termination beyond a reasonable doubt and whether WSF's enforcement was overzealous.

b. Court Decision

Decision 563-MEC was based on an earlier ruling by the Washington State Court of Appeals that WSF had to provide compensation for watch turnover to engine room employees.

c. Interpretation of Collective Bargaining Agreement Language

Five awards were based on interpretation of collective bargaining agreement language.

- *Process and pay procedures (Decisions 473-MEC, 506-MEC, and 537-MEC)*. Decision 473-MEC which involved compensation for the E watch on the Anacortes ferry, Decision 506-MEC which involved shoregang pay at Eagle Harbor, and Decision 537-MEC which involved the payment of

an employee during a touring watch were based on the arbiter's interpretation of the applicability of various portions of the collective bargaining agreements.

- *Engine room schedule (Decision 491-MEC)*. The decision which involved an engine room relieving schedule on the ferry Wenatchee was based on the arbiter's interpretation of the collective bargaining agreement.
- *Return to work after injury (Decision 536-MEC)*. The decision which involved a return to work of an ordinary seaman from an injury was based on the arbiter's interpretation of the collective bargaining agreement, which in this case was found to provide clear and unambiguous language.

2. Other MEC Grievance Arbitrations Requests

The consultants reviewed the other 34 grievance arbitration decisions and orders, 11 of which were orders closing a withdrawn grievance and 23 of which were orders closing a settled grievance. None of the 34 decisions appear to have involved matters that would require maritime affairs expertise.

3. Consultants Conclusion

The consultants conclude that PERC has the expertise to have made the grievance arbitration decisions reviewed for this report. The decisions were based on legal interpretations and involved matters that did not require specialized maritime knowledge.

D. Expertise Used in MEC Unit Clarification Decisions

Both of the MEC unit clarification decisions were filed by OPEIU which represents WSF administrative positions. The case in which an order was issued involved a bid administrator (Decision 540-MEC) and the other which was withdrawn involved a facility services coordinator (Decision 569-MEC). Neither position is a technical position that requires maritime affairs knowledge to determine an appropriate bargaining unit.

Consultants Conclusion

Given the types of positions involved PERC would have had the expertise to make the bargaining unit clarification decisions.

E. Certifying Issues for Interest Arbitration

1. 2009-11 Labor Agreements - WSF Unions - Certification of Issues

For the 2009-11 labor agreements the state had nine agreements subject to interest arbitration, of which six were for WSF unions.

The issues decided by the arbiter in the WSF labor agreements are outlined in the table below along with the MEC role to the extent it could be determined from the interest arbitration decision. The issues considered at interest arbitration were: compensation; vacation and holiday credits, employer contributions to an education program, drug and alcohol testing, dispatch rules, number of relief deck employees, parking permits, and crew requirements for the Steilacoom II (a vessel leased from Pierce County) and the Hiyu, a 34-auto vessel.

In five of the six WSF interest arbitration decisions MEC certified the issues, and in one the parties waived certification of the issues and mediation.

**Table 11.
WSF Interest Arbitrations Certifications 2009-11 Biennium Contracts**

Union	Interest Arbitration Issues	MEC Role
FASPAA	1) Wages 2) Drug & alcohol testing 3) Holidays 4) Vacations 5) "Me Too" clause (wage increases tied to interest arbitration awards related to other maritime unions) Item 5 was removed during the arbitration	Certified the issues for arbitration
IBU	1) Wages 2) Wages, additional targeted classification increases 3) Entry level rates 4) Pay for use of spray painting equipment and assigning OSs to don bunker gear 5) Early call-out definition and minimum monthly pay and overtime 6) Terminal lead person definition and terminal part-time and on call employees 7) Crew requirements for Steilacoom II and Hiyu 8) Vacations 9) Maintenance and cure payments 10) Additional union-sponsored defined contribution retirement (401K) plan 11) Relief deck employees – number of 12) On call deck employees – dispatch rules 13) Terminal – filling of vacancies and year around positions 14) Information department – parking permits	Certified the issues for arbitration.
MM&P Deck Officers	1) Rates of pay & vacation credits 2) License renewal payment 3) Arbitration process	Certified the issues for arbitration.
MM&P Watch Supervisors	1) Classifications and rates of pay 2) Vacations	Certified the issues for arbitration.
Puget Sound Metal Trades	1) Wages	Parties waived mediation Parties waived certification of issues by MEC
MEBA Licensed Engine Room Unlicensed Engine Room	1) Wages 2) Vacation accrual 3) Employer contributions to the education program of MEBA	Certified the issues for arbitration

2. 2009-11 Labor Agreements – Other State Unions

The issues decided by the arbiter in the other three state labor agreements that were subject to 2009-11 interest arbitration are in the table below. The issues decided by the arbiter in these agreements included compensation, employee assignment issues, and retirement benefits.

Table 12.
2009-11 Biennium Non-WSF State Interest Arbitrations Certifications

Union	Interest Arbitration Issues	PERC Role
Washington State Patrol Troopers' Association	<p>Majority issues resolved by conclusion of interest arbitration hearing. Remaining in two groups 1) Compensation issues 2) Assignment issues.</p> <p>Compensation Issues:</p> <ol style="list-style-type: none"> 1) Wages 2) Court Appearances 3) Vacation Accrual 4) Uniforms and Equipment 5) Premium pay for BAT Technicians <p>Assignment Issues:</p> <ol style="list-style-type: none"> 1) Employer Assignments/Transfers 2) Specialty Assignments 3) Motorcycles 4) New definition of "Line Employee" 	<p>PERC cases 21892, 21803</p> <p>PERC certified approximately 30 issues to interest arbitration.</p> <p>Bargaining representatives and counsel whittled down list before hearing and reduced further as hearing progressed.</p> <p>Majority resolved by conclusion.</p>
SEIU, Local 925	<ol style="list-style-type: none"> 1) Size of across-the-board increase in subsidy rates for Licensed Family Home and Licensed-Exempt providers. 2) Increase of infant over toddler subsidy increase. Pay toddlers of 12-17 months same as infants. 	<p>PERC Case 21885</p> <p>Engaged in mediation with PERC staff member. 7 Articles unresolved following mediation. Agreed on 5 of 7 in post mediation talks.</p> <p>Hearing held August 4-8, 2008</p>
SEIU Local 775	<ol style="list-style-type: none"> 1) Wages: Certification Differential 2) Retirement Benefit 	<p>Not listed as PERC case. Supplemental Interest award. Arbitrator original 2008 award not implemented by State.</p> <p>Impasse on several issues substitute for arbitrator decision.</p> <p>Executive Director of PERC certified issues for arbitration 8/31/09.</p> <p>Both parties waived use of partisan arbitrators.</p>

3. Consultants Conclusion

The consultants conclude that PERC has the expertise to certify issues for interest arbitration based on:

- *PERC's extensive role in other interest arbitration issues*, which extends beyond the role played by MEC
- *Certifying issues for interest arbitration is an administrative law matter* requiring a determination that the parties have bargained in good faith and are at impasse;

- *The issues certified in the 2009-11 WSF collective bargaining agreement interest arbitrations which are similar for the WSF and non-WSF agreements.* The only issue that was certified for interest arbitration for the 2009-11 agreements that involved a maritime specific issue was IBU deck crewing on the *Steilacoom II* and the *Hiyu*. For the *Steilacoom II*, leased from Pierce County, the FCMS arbiter noted that WSF and the union were already in agreement on staffing with the only issue being the inclusion of the *Christine Anderson* (a second *Steilacoom II* vessel owned by Pierce County but not leased by WSF) in the agreement. For the *Hiyu*, the arbiter based the decision on the Coast Guard required staffing level.

**APPENDIX A.
DECISIONS REVIEWED**

PERC Decisions

Decision Number	Jurisdiction	Union	Decision Date
Unfair Labor Practice Decisions: Findings of Fact, Conclusions of Law, and Order 18			
10616-PECB	City of Vancouver	Vancouver Police Officers Guild	12/14/2009
10608-PSRA	U of Washington	SEIU Healthcare 1199NW	11/25/2009
10576-PECB 10577-PECB 10578-PECB	King County	Technical Employees Union	10/22/2009
10571-PECB	Lewis County	Lewis County Corrections Guild	10/15/2009
10561-EDUC	Vancouver School District	Vancouver Education Association	10/6/2009
10547-PECB	King County	Amalgamated Transit Union, Local 587	9/29/2009
10546-PECB	Evergreen School District	Public School Employees of Washington	9/25/2009
10534-PECB	Northshore Utility District	Washington State Council of County and City Employees, Council 2, AFSCME, AFL-CIO	9/10/2009
10522-PECB	City of Lynnwood	Washington State Council of County and City Employees, AFSCME, Council 2	8/26/2009
10490-PSRA	University of Washington	Washington Federation of State Employees	7/31/2009
10489-PECB	Griffin School District	Teamsters Local Union 252	7/29/2009
10435-PECB	Seattle School District	Seattle/King County Building and Construction Trades Council	6/11/2009
10413-PSRA	Central Washington University	Public School Employees of Washington	5/28/2009

Decision Number	Jurisdiction	Union	Decision Date
10410-PECB	Seattle School District	Int'l Union of Operating Engineers, Local 609	5/14/2009
10328-PECB	Seattle School District	Seattle-King County Building & Construction Trades Council	3/9/2009
10323-PECB	City of Mabton	Teamsters Local 760	2/5/2009
10314-PECB	State-Washington State Patrol	Washington State Patrol Troopers Association	2/26/2009
10280 -PECB	Tacoma Pierce County Employment & Training Consortium	Teamster Local 117	1/23/2009
10280-A-PECB			8/12/2009
Unfair Labor Practice Decisions: Preliminary Ruling and Order of Partial Dismissal (17)			
10622 - PECB 10623-PECB	City of Vancouver	International Association of Fire Fighters, Local 453	12/14/2009
10621-PECB	City of Vancouver	Vancouver Police Officers Guild	12/14/2009
10572-PECB	Prosser School District	Public School Employees of Washington	10/16/2009
10560-PECB	Kittitas County	Washington State Council of County & City Employees, Local 792-CH	10/1/2009
10536-PECB	City of Tukwila	Int'l Assoc of Firefighters Local 2088	9/16/2009
10511-PECB	Lewis County	Lewis County Corrections Guild	8/18/2009
10487-EDUC	Toppenish School District	Toppenish Education Association	7/27/2009
10445-PECB	City of Port Angeles	Int'l Brotherhood of Electrical Workers, Local 997	6/17/2009
10444-PSRA	University of Washington	Washington Federation of State Employees	6/17/2009
10419-PSRA	State-Employment Security	Fair Washington Labor Association	5/22/2009
10418-PSRA	State - Labor & Industries	Fair Washington Labor Association	5/22/2009

Decision Number	Jurisdiction	Union	Decision Date
10415-PSRA 10416-PSRA	State - Revenue	Fair Washington Labor Association	5/22/2009
10335-PECB	City of Seattle	Seattle Police Officers' Guild	3/23/2009
10304 - PECB	Northshore Utility District	State - Council of County and City Employees	2/20/2009
10301-PECB	Highline School District	Teamsters Local 763	2/13/2009
10298-EDUC	Kent School District	Kent Education Association	2/5/2009
10261-EDUC	Northport School District	Northport Education Association	12/29/2008
Unfair Labor Practice Decisions: Order of Dismissal (10)			
10613-PECB	City of Vancouver	OPEIU	12/1/2009
10602-PECB	City of Ridgefield	Ridgefield Police Officers' Association	11/13/2009
10595-PECB	City of Aberdeen	Washington State Council of County & City Employees	11/6/2009
10579-PECB	City of Port Angeles	Int'l Brotherhood of Electrical Workers, Local 997	10/23/2009
10563-PECB	City of Seattle	Int'l Assoc. of Fire Fighters, Local 27	10/6/2009
10518-PERC	City of Seattle	Int'l Federation of Profession & Technical Engineers, Local 17	8/26/2009
10509-PECB	Clark County	Clark County Sheriff's Office Support Guild	8/14/2009
10475-PECB	City of McCleary	Int'l Brotherhood of Electrical Workers, Local 77	7/9/2009
10267-PECB	Community Transit	Amalgamated Transit Union, Local 1576	2/2/2009
10267-A-PECB			12/10/2009
10264-PECB	King County Water District 90	Communications Workers of America, Local 7803	12/31/2008

Decision Number	Jurisdiction	Union	Decision Date
Agreement and Close/Order Closing Case (10)			
10753-PECB	Seattle School District	International Union of Operating Engineers, Local 609	5/14/2010
10444-A-PECB	University of Washington Harborview	Washington Federation of State Employees	3/17/2010
10785-PECB	Kalama School District	SEIU Local 925	6/10/2010
10754-PECB	Seattle School District	International Union of Operating Engineers, Local 609	5/6/2010
10823-PECB	Timberland Regional Library	Timberland Regional Library Staff Association	8/6/2010
10819-PSRA	Wenatchee Valley Community College	Washington Public Employees Association	7/30/2010
10807-PECB	Lewis County	Teamsters Local 252	7/8/2010
10786-EDUC	Auburn School District	Auburn Education Association	6/11/2010
10826-PECB	Whidbey Public Health District	United Food and Commercial Workers, Local 21	8/6/2010
10833-PECB	Skagit County	IFPTE, Local 17	8/18/2010
Unfair Labor Practice Decisions: Findings of Fact, Decisions & Orders Request for Summary Judgments (2)			
10533-PECB	State Office of the Governor	Washington State Patrol Lieutenants Association	9/4/2009
10313-PECB	State - Office of the Governor	Washington State Patrol Troopers Association	2/26/2009
10313-A-PECB			4/21/2009
Unfair Labor Practice Decisions: Stipulated Facts in Lieu of Hearing - Dismissal (1)			
10299-PECB	City of Spokane	Spokane Police Guild	2/9/2009
Unfair Labor Practice Decisions: Temporary Relief (1)			
10353-PSRA	State - Office of the	SEIU Healthcare 1199NW	4/1/2009

Decision Number	Jurisdiction	Union	Decision Date
10354-PSRA	Governor		
Grievance Arbitration Decisions (10)			
19165-A-05-1408	Eastmont School District	Eastmont Paraeducators Association	10/25/2006
20466-A-06-1431	Mason County	Mason County Engineers Guild	1/5/2007
21081-A-07-1441	Issaquah School District	Service Employees International, Local 925	4/14/2008
21186-A-07-1444	City of Tacoma	International Association of Machinists and Aerospace Workers, Lodge 160, Local 297	2/11/2008
21898-A-08-1452	Lewis County	Teamsters Local 252	7/9/2009
22334-A-09-1454	Mason County	Teamsters Local 252	11/5/2009
22263-A-09-1457	Skagit County	Teamsters Local 231	7/9/2009
22514-A-09-1463	Mason County Fire Protection District 5	International Association of Fire Fighters, Local 2394	4/8/2010
22990-A-10-1475	Lewis County	Teamsters Local 252	5/26/2010
22951-A-10-1473	Island County	Teamsters Local 231	6/1/2010

MEC Decisions

Decision Number	Decision Date	Union
Unfair Labor Practice: Order Closing Settled Complaint (38)		
458-MEC	4/27/2005	OPEIU
462-MEC	11/15/2005	IBU
464-MEC	11/28/2005	IBU
467-MEC	12/13/2005	MM&P
469-MEC	1/27/2006	IBU
470-MEC	1/20/2006	PSMTC
475-MEC	4/6/2006	MEBA
477-MEC	5/4/2006	PSMTC
481-MEC	5/16/2006	IBU
483-MEC	6/16/2006	OPEIU
487-MEC	7/17/2006	MEBA
490-MEC	8/7/2006	IBU
493-MEC	10/12/2006	IBU
494-MEC	10/12/2006	IBU
503-MEC	2/16/2007	IBU
513-MEC	4/27/2007	IBU
514-MEC	5/3/2007	IBU
515-MEC	5/7/2007	IBU
516-MEC	5/29/2007	IBU
526-MEC	8/8/2007	OPEIU
528-MEC	9/14/2007	IBU
529-MEC	9/14/2007	IBU
539-MEC	2/28/2008	IBU
541-MEC	2/28/2008	IBU
543-MEC	6/13/2008	OPEIU
544-MEC	6/17/2008	IBU
549-MEC	8/7/2008	IBU

Decision Number	Decision Date	Union
553-MEC	1/16/2009	IBU
554-MEC	2/27/2009	IBU
555-MEC	4/9/2009	IBU
557-MEC	4/22/2009	IBU
558-MEC	5/4/2009	MEBA
566-MEC	9/25/2009	IBU
568-MEC	10/29/2009	OPEIU
570-MEC	10/1/2009	OPEIU
571-MEC	10/1/2009	OPEIU
575-MEC	12/30/2009	IBU
577-MEC	1/6/2010	OPEIU
Unfair Labor Practice: Order Closing Withdrawn Complaint (10)		
459-MEC	9/23/2005	IBU
463-MEC	11/10/2005	OPEIU
478-MEC	5/4/2006	MEBA
482-MEC	5/18/2006	MEBA
527-MEC	8/23/2007	MEBA
538-MEC	2/7/2008	IBU
548-MEC	8/5/2008	IBU
551-MEC	11/4/2008	IBU
556-MEC	4/10/2009	MM&P
562-MEC	6/8/2009	OPEIU
Unfair Labor Practice: Decision and Order (7)		
465-MEC	1/11/2006	IBU
468-MEC	5/14/2006	IBU, MM&P
484-MEC	8/10/2006	MM&P
511-MEC	4/17/2007	IBU
550-MEC	10/31/2008	MM&P
560-MEC	5/8/2009	IBU

Decision Number	Decision Date	Union
572-MEC	12/8/2009	IBU
Unfair Labor Practice: Order Granting Motion to Dismiss (1)		
552-MEC	12/8/2009	IBU
Grievance Arbitration: Order Closing Settled Grievance (23)		
472-MEC	2/13/2006	IBU
474-MEC	3/27/2006	MEBA
476-MEC	4/13/2006	IBU
480-MEC	5/5/2006	IBU
485-MEC	9/20/2006	IBU
486-MEC	6/29/2006	IBU
488-MEC	7/24/2006	MEBA
495-MEC	11/7/2006	IBU
499-MEC	11/30/2006	IBU
502-MEC	1/9/2007	IBU
504-MEC	3/13/2007	IBU
505-MEC	4/2/2007	IBU
510-MEC	4/12/2007	IBU
512-MEC	4/17/2007	IBU
521-MEC	7/9/2007	IBU
524-MEC	7/27/2007	IBU
525-MEC	8/6/2007	IBU
532-MEC	10/2/2007	IBU
533-MEC	11/19/2007	IBU
542-MEC	5/30/2008	IBU
547-MEC	8/5/2008	IBU
564-MEC	6/25/2009	IBU
573-MEC	10/27/2009	IBU
Grievance Arbitration: Order Closing Withdrawn Grievance (11)		
479-MEC	5/5/2006	IBU

Decision Number	Decision Date	Union
498-MEC	11/15/2006	OPEIU
501-MEC	1/9/2007	IBU
507-MEC	4/12/2007	IBU
508-MEC	4/12/2007	IBU
509-MEC	4/12/2007	IBU
519-MEC	6/22/2007	IBU
545-MEC	7/17/2008	IBU
559-MEC	5/5/2009	IBU
561-MEC	5/26/2009	IBU
565-MEC	7/1/2009	IBU
Grievance Arbitration: Decision and Award (7)		
473-MEC	3/23/2006	IBU
491-MEC	10/10/2006	MEBA, AFL-CIO
506-MEC	4/18/2007	IBU
518-MEC, 518-A	6/14/2007	IBU
536-MEC	1/15/2008	IBU
537-MEC, 537-A	1/25/2008	IBU
563-MEC, 563-A	7/24/2009	MEBA
Unit Clarification (2)		
540-MEC, 540-A	3/27/2008	OPEIU
569-MEC	10/1/2009	OPEIU

APPENDIX B. DECISION TIMELINES

MEC - Unfair Labor Practices Order Closing a Settled Complaint

Decision	Total Time (months)	# conferences held	First Conf (months)	Hearing	Resolved at Settlement Conference
475	1.0	1	.25 (1 week)		yes
541	1.0	1	0.5		yes
503	2.5	1	1.5		
539	2	1	2		yes
464	3	1	1		
558	3.5	1	2		
470	5	1	4		yes
514	4	1	4		yes
515	4	1	3		
526	6	1	4		yes
568	4.5	1	2		
571	5.5				
481	5	1	5		yes
555	5	1	5		
469	7	1	5.5		yes
577	6	1	4		
543	6	1	4		
557	7	1	5		yes
570	8	1	5		
477	8	1	4		
490	7.5	1	7		yes
544	8	1	8		yes
549	8				
467	6	1	3	yes	
494	10	1	6.5		
553	12	2	11		yes
458	13	2	1		
483	15				
575	15	2	3		

Decision	Total Time (months)	# conferences held	First Conf (months)	Hearing	Resolved at Settlement Conference
566	18	1	3		
462	6.5	2	2		
487	24	2	2		
554	16	3	5		yes
516	22	1	3		
513	39	1	1		
528	28	2	1.5		
493	38	2	2		
529	36	1	7		

MEC - Unfair Labor Practices Order Closing a Withdrawn Complaint

Decision	Total Time (months)	# conferences	First Conf (months)
459	13	1	4
463	10	0	
478	5	2	3
482	6	0	
527	1.5	0	
538*	43	2	3
548*	46	0	
551	12	1	3
556	11	1	1
562	1	0	0

*538 deferred to arbitration. 548 held in abeyance pending resolution of another case.

MEC - Unfair Labor Practices Decision and Order

Decision	Total Time (months)	# conferences	First Conf (months)	Hearing Scheduled (months)	# hearings
484	30	3	0.25 (1 week)	26	1
465	7.5	1	1	3	1
468	28	4	2	17	1
511	12.6	1	6	8	1
550	5.2	2	1	2	1
560	9.3	1	4	5	1
572	20	1	6	17	1

PERC Unfair Labor Practice Decisions: Findings of Fact, Conclusions of Law, and Order - Hearings Conducted

Decision Number	Total Time (months)	Deficiency Notice (days)	Amended Complaint (days)	Preliminary Ruling from Original or Amended Complaint (days)	Answer (days)	Hearing (months)	Briefs (months)	Dec (months) - from hearing
10616	10			4	20	3		7
10608	8			8	21	3	2	4.5
10576, 10577, 10578	10			16	21	2		7
10571	7			3	18	2	1.5	4.5
10561	6	14	21			2		4
10547	7			13	21	3	2	4
10546	14			1	21	4		10
10534	10	14	6	308		4		5
10522	3.5					2		1.5
10490	15	9	21	12	21	6		6.5
10489	7			7	17	4		3
10435	7	13	21	10	18	3.5	1	1.5
10413	11			6	21	5		6
10410	10			5	20	4		6
10328	3			7	12	1.5	0.75	1.5
10323	8			11	13	4.5		3.5
10314	12			57	21	6		4
10280 10280A	6.5			2	21	2.5	2	3

PERC Unfair Labor Practice Decisions: Preliminary Rulings and Orders of Partial Dismissal

Decision Number	Total Time (months)	Deficiency Notice (days)	Amended Complaint (days)	Preliminary Ruling (days)
10622, 10623	1	3	21	11
10621	1	3		
10572	1	7		
10560*	1	9		
10536*	1	4	21	5
10511	1	7	21	5
10487	1.5	11	20	18
10445	1	6	21	8
10444	1	3	21	12
10419	1.5	14	21	16
10418	1.5	14	21	16
10417	1.5	14	21	16
10415, 10416	1.5	14	21	16
10335	1	5	21	5
10304	1.5	13	21	9
10301	1	12	16	8
10298	2	25	21	14
10261	1	12	6	20

* Preliminary ruling, deferral inquiry and partial order of dismissal.

PERC Unfair Labor Practice Decisions: Dismissals

Decision Number	Total Time (months)	Deficiency Notice (days)	Amended Complaint (days)	2nd Amended Complaint	Notes
10613	1	5			
10602	1.5	14	13	20	Amended complaint before first deficiency notice
10595	1	9			
10579	1	4			
10563	1	6			
10518	1	3			
10509	7.5	4			Complaint deferred to arbitration and found employers conduct was protected. Dismissed two days after review of arbitrator decision.
10475	1	11			
10267	1.5	9	20		
10267-A	12				Affirmed decision from 10267
10264	1	12			

PERC Unfair Labor Practice Decisions: Orders Closing a Settled or Withdrawn Complaint

Decision Number	Total Time (months)	Deficiency Notice (days)	Amended Complaint (days)	Prel Ruling (days)	Answer (days)	Hearing (months)	Settlement case opened (months from filing)	Total settlement case time (months)	Settlement conf (days)	Settlement case withdrawn (months) from conf
10753	3			4	22		1	2.5	32	1.5
10444-A	10	3	21	12	21	2.5	8	2.5	22	2
10785	2.5			5	22		1.5	2.5	34	1
10754	2.5			3	24		1	0.5	10	0
10823	6.5	4	19	2	12		3.5	2	12	1.5
10819	3	6	7	2	15		1	2.5	64	0.5
10807	5			4	15		3	2.5	30	1.5
10786	4			5	21		2.5	1.5	30	0.5
10826	6			2	18	3	4.5	1.5	20	1
10833	2.5			1	23		0.5	1.5	40	0

MEC Orders Closing Settled Grievances

Decision	Total Time (months)	# conferences	First Conf (months)	Hearing	Resolved During Settlement Conference
512-MEC	37	1	4		
480-MEC	16	2	2		
474-MEC	11	1	4		
476-MEC	7	1	3		
495-MEC	14	1	1		
472-MEC	4	1	4		yes
485-MEC	11	2	5		yes
505-MEC	15	1	1	yes	
486-MEC	2.5	1	1		
499-MEC	2	1	1		
502-MEC	3	1	3		yes
504-MEC	5	1	3		
510-MEC	4	1	3		
532-MEC	9	1	2		
524-MEC	5	1	3		
542-MEC	13	1	1.5		
573-MEC	6	2	2		
521-MEC	1	1	1		yes
525-MEC	1.5	1	1.5		yes
533-MEC	2	2	1		
547-MEC	10	1	1.5		
564-MEC	6	0			
574-MEC	11	1	5		
488-MEC	3	0			

MEC Orders Closing Withdrawn Grievances

Decision	Total Time (months)	# conferences	First Conf (months)	Hearing	Resolved During Settlement Conference
545-MEC	6	1	3		
507-MEC	1	0			
508-MEC	1	0			
509-MEC	1	0			
479-MEC	8	1	1		
501-MEC	3	1	0.5		
519-MEC	5	1	4		
565-MEC	6	1	3		
559-MEC	4	1	3		yes
561-MEC	5	1	3		

**APPENDIX C.
MEC COMMISSIONER APPOINTMENTS**



STATE OF WASHINGTON
MARINE EMPLOYEES' COMMISSION
Evergreen Plaza Building
P.O. Box 40902
Olympia, Washington 98504-0902
(360) 586-6354
www.marineempcom.org

Recent Commissioner Appointments

Ford, Elizabeth Appointed 12/1/04 – 6/15/06
Re-appointed 6/15/06-6/15/11 Resigned 1/1/08
Position vacant for 2 months (1/08-2/08)

Replaced by **Warren, Patricia** Appointed 2/21/08 – 6/15/11
Full-time employee for Teamsters Local 174; current employer allows no more than 3 days/month for MEC duties

Sullivan, John Appointed 6/15/03-6/15/07
Continued to serve an additional 13 more months after term ended until 7/31/08;
unable to conduct hearings 6/07-7/08 due to failing health
Position search took Governor's office more than 13 months to find replacement

Replaced by **Cox, John M.** Appointed 8/11/08 – 6/15/12
Extensive maritime experience, no adjudicatory experience. Unable to conduct hearings until completion of 3/09 National Judicial College training.

Position unable to conduct hearings for 8 months (8/08-3/09)

Swanson, John R. Appointed 10/13/03-6/15/08
Re-appointed 8/12/08-6/15/13