



MARINE EMPLOYEES' COMMISSON PUBLIC EMPLOYMENT RELATIONS COMMISSION REVIEW

**JOINT TRANSPORTATION COMMITTEE
OCTOBER 12, 2010**

Cedar River Group



Legislative Direction 2010 Session

Joint Transportation Committee to:

- Conduct a comparison of the processing time of labor-related grievances and hearings at the Public Employment Relations Commission (PERC) and at the Marine Employees' Commission (MEC).
- Investigate whether the necessary expertise exists at PERC to administer the grievances and hearings currently administered by MEC.

(§ 204(9)(b) of SSB 6381)

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.

Consultants' Approach

Processing Time

- Examined commissions' responsibility, organization, and administrative rules.
- Reviewed MEC Decisions 458-577 (dated 2005-2010)
 - Found three types: unfair labor practice, grievance arbitration, unit clarification decisions
 - Excluded cases brought by individuals
 - Examined similar types and numbers of PERC decisions

Expertise

- Examined expertise used by MEC in making decisions and in certifying issues for interest arbitration.

PERC and MEC Review

- PERC and MEC very cooperative.
- Checked facts before consultants' made the comparison.

Responsibilities

Public Employment Relations Commission

- Created in 1975 to administer all types of public employment relations.
- 1983 – Washington State Ferries (WSF) marine employment relations excluded with the re-establishment of MEC.
- Jurisdiction – approximately 350,000 public sector employees.
 - Only public sector employment relations not included are WSF marine employment relations.
- Administer nine statutes.

Marine Employees Commission

- There from purchase of ferry system in 1951 to 1975 (PERC).
- 1983 – MEC re-established after 1981 wildcat strike.
- Jurisdiction – approximately 1,590 marine employees covered by nine bargaining agreements.
- Administer one statute.

Public Employment Relations Responsibilities: Both Commissions

Unfair labor practices

- 57 of 100 MEC decisions reviewed

Grievance arbitration

- 41 of 100 MEC decisions reviewed
- MEC arbitrates only/PERC also responsible for mediation

Unit clarification

- 2 of 100 MEC decisions reviewed

Impasse resolution

- 6 of 9 2009-11 biennium state interest arbitration certifications
- MEC certifies issues for interest arbitration/PERC is also responsible for fact finding, grievance and contract mediation, & interest arbitration services

Organizational Structure

Public Employment Relations Commission

- Three commissioners: must be knowledgeable in state labor relations
 - Current commissioners attorneys
- Commission – policy & appellate functions
- Staff – substantive decisions
- Management emphasis since 2006 on eliminating case backlog

Marine Employees Commission

- Three commissioners: one labor, one management, one maritime affairs representing the public
 - Current commissioners backgrounds: Chair arbitrator & director of labor relations, union business agent, shipping & cruise business. No attorneys.
- Commission – adjudicative function as well as policy & appellate
- Staff – does not make substantive decisions
- Affects processing time if:
 - Commissioners not appointed/not available
- Mandated timeframe for bargaining also affects processing

Unfair Labor Practice Processing Time

What is an unfair labor practice?

- Prohibited practices of discriminating against an employee or discouraging from joining a union or otherwise exercising rights as an employee & the refusal of the union or employer to bargain in good faith &/or to interfere with that process

Time Comparison

- Decisions and orders normal process
 - PERC 4 months shorter (25 decisions: 6 MEC & 19 PERC)
- Decisions where the complaint was held in abeyance pending the outcome of grievance/arbitration process
 - PERC 2 years shorter (4 decisions: 3 MEC & 1 PERC)
- Orders closing settled or withdrawn complaints
 - PERC 7.5 months shorter (58 decisions: 48 MEC & 10 PERC)
- Temporary relief orders
 - MEC 1 month shorter (1 decision each)
- Appeals
 - MEC's 5 months shorter (5 decisions: 1 MEC & 4 PERC)

Unfair Labor Practice Processing Time

Why is PERC faster?

- Initial processing: PERC has highly structured process
 - Deficiency notice (35 of 60): average 9 days
 - Amended complaint: 21 days required
 - Preliminary ruling: average 14 days if amended
 - Answer: 21 days
- Initial processing: MEC not as structured
 - Deficiency notice (3 of 57): average 26 days
 - Amended complaint: 8 days average for 2 received
 - Preliminary ruling: n/a
 - Answer: 2 weeks before hearing

Other Consequence

- MEC accepts more unfair labor practices
 - JLARC 1998 Audit finding - because of initial processing
 - MEC states it is because WSF has been engaging in unfair labor practices

Grievance Arbitration Processing Time

MEC Broader Definition of Grievance

- PERC: Disagreements that arise under a collective bargaining agreement
- MEC: A formal statement alleging injury, injustice, or violation of rights granted by rule, statute, collective bargaining agreement, or past practice

Changes in collective bargaining agreements likely to decrease MEC grievance arbitrations

Time Comparison

- Awards. PERC is 13.5 months faster (17 decisions: 7 MEC & 10 PERC)

Why is PERC Faster?

- MEC has a different process – including settlement conferences & appeals to the Commission
 - PERC does mediation, but not settlement conferences for arbitrations
 - PERC arbitration decisions cannot be appealed to the Commission
- MEC is more willing to grant time extensions to the parties
 - PERC – if important enough to file, important enough to settle promptly

Unit Clarification Processing Time

What is Unit Clarification?

- To clarify an existing unit means to resolve issues concerning placement of represented or unrepresented positions in existing bargaining units

Time Comparison

- Orders. MEC 3 months faster (11 decisions: 1 MEC & 10 PERC)

Why is MEC Faster?

- One award – hearing converted to a settlement conference
 - PERC's time includes hearing, post-hearing briefs, and decision time
 - Only other MEC case was an order closing a resolved petition/no comparable for PERC

Expertise

Two reasons consultants concluded that PERC has expertise

MEC decisions based on legal interpretations (i.e.)

- Whether the alleged unfair labor practice was:
 - A mandatory subject of bargaining
 - Rose to the level of an unfair labor practice
- Whether WSF had just cause to terminate an employee
- Interpretations of collective bargaining agreement language
- References to precedents
- One decision based on Washington State Court of Appeals action

MEC decisions involve matters that are similar in PERC decisions

- Unit clarification – 2 MEC decisions facility coordinator & bid administrator
- Unfair labor practice & grievance arbitration topics: parking, payroll procedures, pay, employee theft, return to work after injury, etc.
- Two decisions related to shipboard staff - based whether there was a unilateral change in an area that is a mandatory subject of collective bargaining/whether there was an obligation to bargain