RULES FOCUS GROUP
MEETING NOTES
October 24, 2005

Here are my notes from the October 24, 2005 focus group meeting. If you have any questions or if you think I missed something, please don't hesitate in letting me know.

Participants:

Glenn Frye	Washington State University
Joe Olson	OFM/Labor Relations Office
David Levin	King County Labor Relations Office
Dave Fleming	Public School Employees
Julie Howe	City of Redmond
Nancy Kennedy	AFT Washington
Herb Harris	WPEA
Marv Schurke	PERC
Ken Latsch	PERC
Karl Nagel	PERC
Dario de la Rosa	PERC

Our discussions took place in the context of the "Outline of Issues" document dated September 28, 2005, which was prepared after our first meeting. The following notes refer to the specific rule sections at issue on each particular topic discussed.

WAC 391-08-120

Joe Olson raised the possibility of having PERC switch its word processing to Word, rather than using Word Perfect. Marv noted that the Washington State Legislature uses WordPerfect, and the Commission is reluctant to change its existing word processing program. PERC does accept filings in M/S Word.

Electronic filing was discussed. The Commission has updated its forms on the website, and is working on "electronic forms" that clientele will be able to fill out on-line, and then print the completed form for mailing or submission by fax. It appears that computer programming costs for direct on-line filing would be prohibitive.

Formerly WAC 391-08-230

We discussed the use of pre-hearing motions and general pre-hearing practice before PERC.

Joe Olson suggested the use of "mandatory" pre-hearing/settlement conferences for unfair labor practice cases, and stated that the mandatory pre-hearing program worked well with Personnel Appeals Board (PAB) cases, and it should work well with PERC.

Joe Olson also commented that mandatory settlement conferences could remove the appearance of "weakness" that could be perceived if either party asked for settlement help.

Dave Fleming commented that there are already voluntary pre-hearing procedures available for parties who want to discuss settlement, and stated that it should remain voluntary. Dave noted that PERC would have to supply a second LRAM to serve as a settlement mediator, and that such additional case work could create a burden on the agency's staff. In addition, Dave noted that it would not make sense to start detailed pre-hearing processes that could not be sustained as a regular part of practice before the agency, and he also noted that there could be unfair labor practice litigation over the settlement discussions themselves.

Nancy Kennedy commented that an employer could "break" a union financially if it insisted on using a number of pre-hearing steps before a case could be heard. Nancy also noted that there are often complex personal issues that must be considered when asking for a settlement conference, and that settlement efforts may actually make the relationship more difficult. Nancy also noted that it would be necessary to have some kind of statement that all settlement discussions are completely "off-the-record" and could not be used as part of litigation if the settlement efforts were not successful.

Glenn Frye commented that he had recently participated in a successful settlement effort. Glenn explained that the parties were ready to begin the hearing when the PERC Examiner asked if they would like some time to attempt a settlement before the hearing began. Glenn stated that the parties took almost 8 hours to complete their work, but they settled on their own, and the PERC Examiner did not take an active part in the settlement discussions.

As support for avoiding hearings, Joe Olson said that employers are concerned about the time it takes to get a decision issued. Joe asserted that the use of post-hearing briefs causes a great deal of the delay, and he asked if there was some way to allow the parties to make closing arguments in lieu of filing briefs.

Marv Schurke explained that PERC attempts to comply with time limits in the Administrative Procedures Act (APA), Chapter 34.05 RCW in matters dealing with the issuance of decisions:

- PERC must respond to all "applications" within 30 days of filing. This means that the agency must advise clientele of any defects in petitions and/or complaints filed within 30 days of receipt by the agency. Mark Downing does the preliminary rulings on unfair labor practice and nonassociation cases; Ken Latsch does the preliminary check on unit clarification cases; Sally Iverson does the preliminary check on representation cases.
- PERC is supposed to issue a hearing notice within 90 days after the case is filed. This does not mean that the hearing must take place within 90 days.
- PERC Examiners must issue their decisions within 90 days after the "close" of hearing. This means the decision must be issued within 90 days after the last brief or transcript is received.

David Levin stated that he often does not have the parties necessary to authorize a settlement at the start of a hearing, where only "fact witnesses" are available. David believed that a formalized settlement conference may make it easier to get the right players together at a convenient time and place.

391-08-640 Marv Schurke provided an update on the *amicus curiae* briefs issue. Dario de la Rosa explained the process the Commission has outlined for a currently-pending case, and he commented that the Commission has an interest in getting a rule in place.

391-08-820
391-25-051
391-25-076 Marv Schurke asked if there was any comment on the several "housekeeping" changes identified in the issues document. There was no objection to any of the "housekeeping" changes on list.

391-25-140 Marv Schurke asked for comment on the "freeze status quo / suspend bargaining" rule that was of particular concern to the Commission members.

Dave Fleming commented that the "freeze" should continue in its present form, when a "raid" or a "decertification" is filed.

David Levin commented that King County had a situation where action on the insurance benefits for approximately 14,000 employees was held up while a decertification petition affecting only about 86 employees was processed, and he questioned whether there could be some way to deal with "macro" issues in a more timely manner.

Glenn Frye suggested that there could be a motion process to allow some movement on "macro" issues while the petition was still pending.

Marv asked if there would be interest in having a process that would end the "freeze status quo/suspend bargaining" pending an appeal, but allow for motions to keep the freeze/suspend in effect pending the appeal.

David Levin stated that a "fast track" appeal process might help to eliminate the problem.

Nancy Kennedy added that a short turn-around time for appeals could help with the issue, but she also commented that any changes should be made carefully because the bargaining process could be negatively affected if the employer was allowed to make changes before negotiations were finished.

391-25-650	Joe Olson stated that it would make more sense to move the "14 day" limit for filing briefs to 30 days. Everyone that spoke agreed that a 25 page limit on appeal briefs was reasonable.
391-55-300 thru 391-55-355	Marv Schurke discussed the need to have rules in place to support the factfinding process contained in the PSRA, and he asked the participating PSRA clientele to review the rules PERC now has for factfinding under Chapter 41.59 RCW, to see if the same general procedure could be adopted for state bargaining.
391-95-130	Marv Schurke commented that this rule will have to be amended (or a special rule will have to be adopted) to deal with the specific language in the PSRA. He said the PERC staff would write something.

The meeting concluded after two hours, as promised.