

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

TIMELINE: October 1, 2009 through September 30, 2010

PROGRAM MISSION STATEMENT (Customer-Focused Direction)

- The mission of the Bureau of Employment Relations is to provide high quality support to the Michigan Employment Relations Commission, and to foster peaceful, cooperative, and effective public and private sector employer-employee relationships by neutral and timely resolution of labor disputes, application of conflict resolution processes, and education and training.

VISION STATEMENT

- The vision of the Bureau of Employment Relations is to promote excellent labor-management relations between employers and employees in the State of Michigan.

PROGRAM STATEMENT

- The Michigan Employment Relations Commission (MERC), supported by the Bureau of Employment Relations (BER), is statutorily charged with resolving labor disputes between public and private sector employers, labor organizations, and employees. This agency is committed to the reduction of economic waste and the interruption of essential services caused by work stoppages resulting from labor disputes in public and private sector employment. The Bureau and its staff achieve this mandate by fairly and consistently resolving unfair labor practices; conducting union representation elections; handling bargaining unit clarification issues; mediating collective bargaining disputes; appointing fact finders and arbitrators to resolve bargaining impasses; enforcing statutes which protect bargaining rights of public and private sector employees; fostering cooperative programs between public and private sector labor and management; and offering education and training to agency partners and outside constituents. The Commission also provides fact finding, compulsory arbitration, grievance arbitration, and grievance mediation. The Bureau of Employment Relations administers the Public Employment Relations Act, the Labor Relations and Mediation Act, and the Compulsory Arbitration Act (Act 312 of 1969).

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

FUND SOURCE:

- State Restricted Funds. Prior agency funds from GF/GP dollars continue to be replaced by monies derived from Corporation and Securities fees.

LEGAL BASIS:

- Public Act 336 of 1947; Public Act 176 of 1939; and Public Act 312 of 1969

CUSTOMER IDENTIFICATION:

- Customers - Public and private sector employers and employees; labor organizations; legislators; management and program staff of DELEG and other state and federal agencies; outside vendors and citizens of the State of Michigan.
- Stakeholders – Governor's Office; Citizens of the State of Michigan.

CRITICAL GOALS, MAJOR OBJECTIVES and RESULTS

- **Program Goal:**
Promote positive labor- management relations by establishing and/or participating on joint labor-management committees and facilitating collaborative bargaining relationships.
This goal continues to be met.

Processes/Services

The Bureau of Employment Relations/Michigan Employment Relations Commission actively seeks to create a positive labor relations environment. Our agency provides employers and labor organizations with avenues to reduce the likelihood of labor disputes, as well as administrative procedures to promptly resolve such disputes should they occur. All services offered by the Bureau are provided to parties without cost; these free-of-charge services seek to ensure a more positive labor climate and to increase the perception and reality of Michigan as a desirable site to locate, retain and grow jobs.

In FY2010, BER continued to accomplish agency goals and objectives with reduced staff and budget. We continue to operate with less staff in order to ensure that our limited appropriations would extend and cover the required fiscal period. Overall, we have

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

succeeded in meeting our ultimate goals of (1) providing timely and prompt responses to labor- management disputes, and (2) marshalling our forces to extend dispute resolution mechanisms at the earliest juncture.

Highlights of our accomplishments during FY10 include: promptly responding and marshaling forces to resolve all labor disputes within our agency's jurisdiction, as well as presenting on numerous occasions to educate and train constituents concerning the various laws administered by our agency and their legal rights and obligations under those laws - a vital part of our Bureau's mission. Significantly, we achieved the latter goal with minimum outlay of State funds. We also improved and up-dated the informational materials, educational booklets and other print materials disseminated to agency constituents, as well as consistently updated and supplemented the content posted on our public web-site at www.michigan.gov/merc.

This agency considers labor-management cooperation to be a vital component of our mission. In an effort to achieve this goal, Bureau Staff are members of the Executive Board of and participate extensively in the activities of the Michigan Labor-Management Association. Our agency also provides collaborative bargaining training to constituent parties and outside groups, when requested (e.g., West Shore Medical Center and its Michigan Nurses Association & Service Employees International Union).

The Bureau of Employment Relations frequently utilizes a unique collaborative approach in assisting outside constituents to improve labor- management relations and resolve difficult disputes. One recent example of a beneficial outcome relying on this collaborative approach involves a Livonia based private sector company that was slated to close its doors if labor would not agree to a 18% pay reduction. After the Union rejected the 18% pay cut, the BER mediator facilitated the parties reaching a 2-year agreement with a 10% pay reduction but avoiding the company's planned shutdown.

We have also interfaced with the Rapid Response Team (RRT) – another DELEG program. While our programs' missions may differ, together our missions often intersect in a manner that synergizes the level of collaboration to produce significant benefits for the involved constituents. Examples of the effectiveness of collaborations between the Bureau and RRT are demonstrated in the service and assistance provided to the following parties located in various geographical locations throughout the state:

Welch Foods and the United Food & Commercial Workers Union #825 (Berrien County)

American Electric Power & IBEW (Berrien County)

Hillsdale Intermediate School District & MEA (Hillsdale County)

Means Industries & UAW (Saginaw County)

AAR Mobility & UAW (Wexford County)

Ann Arbor Public Schools & Teamsters Union #214 (Washtenaw County)

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

Visteon & UAW (Washtenaw County)

BER staff continues to communicate promptly with RRT personnel to ensure that labor disputes are not the reason for an entity deciding to reduce its local workforce, relocate to another state, or permanently close its doors.

- **Program Goal:**
Provide continuing education and training to agency constituents and the general public.
This goal continues to be met.

Processes/Services

As part of our mission to offer education and training, Bureau staff worked alongside the Michigan Employment Relations Commission (MERC) on the following education endeavors:

Our agency planned the agenda, arranged for the speakers, and presented a full days' training and refresher program for MERC's Panel of Act 312 Arbitrators and Fact Finders in April 2010. This program was conducted in collaboration with and via the generous sponsorship of the Alternative Dispute Resolution Program at MSU College of Law. This year, the Municipal Employees' Retirement System of Michigan (MERS) also provided financial and other support allowing our agency to present the program without significant costs incurred by the State.

This training is a key component of our agency's mission, which includes, fostering peaceful and cooperative employer-employee relations through education and training. Over 100 persons attended the April session and participated in more than 6 workshops. Attendees gained information from experts on timely, relevant, and fast-changing topics, including: The Economy and the Current State of Public Sector Bargaining; Comparable and Creative Health Care Options for Employees and Retirees; Audits and Accurately Analyzing the Current Financial Picture; and Providing a Secure Retirement in a Challenging Economy. Attendees also gleaned information about recent and proposed legislation impacting our agency, including: amendments to the Public Employment Relations Act (PERA), Act 312 legislation, and concerning significant MERC cases affecting Act 312 and Fact Finding. During the afternoon sessions, panel members and others were updated on an array of issues from the appointment process through the issuance of a 312 Award or a Fact Finding Report/Recommendation, with some comment on expediting proceedings and moving the parties to case closure. Along with our panel of arbitrators and fact finders, some members of the labor relations community (advocates and labor representatives) were also in attendance, allowing them to take advantage of this

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

unique educational opportunity.

Also in furtherance of our educational mission, BER staff regularly conducts presentations on various areas of expertise such as recent Commission case decisions, unfair labor practice charges, mediation and arbitration services. Presentations were made during this period at various locations and included Michigan Education Association conferences, Michigan Labor Management Association conferences, American Bar Association, and Institute of Continuing Legal Education (ICLE) training programs.

- **Program Goal:**
Ensure that representation petitions are processed fairly and impartially in accordance with the Rules and Regulations of the Michigan Employment Relations Commission, while promoting employee free choice of bargaining representatives; facilitating positive and productive labor and employment relationships, and ensuring continuity in work place operations.

This goal was met.

Processes/Services

During the FY10 period, there were no objections or challenges filed relative to the outcome or conduct pertaining to representation or unit clarification matters handled by the Commission, the Bureau or Election Officers.

- **Program Goal:**
Address the growing inventory of unfair labor practice cases awaiting Commission review and decision.

This goal was met.

Processes/Services

During this fiscal period (FY10), the administrative law staff prepared draft decisions for fifty-one Commission issued Decisions and Orders, representing a substantial increase (26%) over the number of decisions drafted and issued during the prior fiscal year. Also, in FY10, the Commission issued fifty (50) decisions on cases in which parties did not file internal appeals (exceptions).

Additionally, the overall number of new unfair labor practice charges processed by the agency increased nearly 20 percent (391), as compared to the FY09 fiscal year. This volume represents the highest number of charges filed since the FY04 period.

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

Notwithstanding the increased filings during the FY10 period, staff effectively reduced the inventory of backlogged cases that were awaiting final review and decision by the Commission.

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: (Leave Blank) **PROGRAM:** Bureau of Employment Relations

PROGRAM EFFECTIVENESS and Efficiency (FY10)

Program Goals/Metrics

See attached charts

Performance Measures

MERC continues to successfully process a significant number of case filings in this challenged economy. The number of filings processed by our agency has increased in several areas (e.g., # of voters participating in union representation elections, # of Petitions for Fact Finding filed, and # of Commission decisions issued).

In FY2010, our Bureau processed the following filings without incident:

| | |
|------|---|
| 521 | Unfair Labor Practice Charge and Representation Petition filings |
| 4503 | Voters participating in Union Representation Elections (71% casting ballots) |
| 92% | Election Certifications issued within 15 days of the Election |
| 2465 | Open Contract Negotiations filings |
| 1488 | Mediation Conferences conducted |
| 99 | Fact Finding Petition filings |
| 43 | Act 312 filings |
| 83 | Grievance Arbitration filings |
| 51 | Commission Decisions & Orders issued from internal appeals (exceptions filed) |
| 50 | Commission Orders issued without internal appeals (no exceptions filed) |

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

Program Improvements Made

Bureau Accomplishments

The number of case filings processed by our agency has increased in several areas in this challenged economy. The number of Commission Decisions issued during the past year has also increased. Charts reflecting the increased number of case filings of Fact Finding, Election, and Unfair Labor Practice matters, as well as the increased numbers of Commission issued Decisions and Orders are included at the end of this report. It is significant that this output was accomplished with reduced staff. *(Note: Agency staff numbers have declined more than 60% over the last few years.)*

Incredibly, in the last six years (from FY04 thru FY10), the Bureau of Employment Relations/MERC has facilitated 709 union representation elections that touched the lives of 108,037 eligible voters.

During the past fiscal year, the number of Commission cases issued in all areas has increased as parties continue to pursue their statutory remedies via MERC procedures. The significant increase in the number of MERC cases issued by the Commission is indicated in the attached chart that reflects the extremely hectic docket of the Michigan Employment Relations Commission that is managed by Bureau personnel.

Collaboration between State Agencies

BER developed a unique collaboration with the Rapid Response Team (RRT) - another DELEG effort. Recognizing a commonality in their missions, BER and RRT work together to reduce the number of entities moving out of state and/or the number of mass layoffs when labor costs may be a reason for the potential job loss. The collaboration involves RRT notifying BER when RRT receives a notice of layoff or closure, and it reasonably appears that BER personnel may be of some assistance with the labor issues. BER labor mediators offer assistance to the parties and work with RRT to determine how best to respond to the situation, ensuring that if the labor issues are resolvable, they do not contribute to the loss of jobs in our state. Examples of BER-RRT interventions are listed earlier in the report under the program goal involving joint labor relations committees.

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

PROGRAM IMPROVEMENT PLANS FOR FY11

- Continue to timely and effectively process the growing inventory of Commission cases.
- Move toward more automated processes for greater internal and constituency service and convenience.
- Review and amend agency rules, policies and procedures to ensure they reflect current processes and provide maximum clarity and understanding.

CHALLENGES FOR FY11 and BEYOND

To provide statutorily-required services with our current complement of employees. We note that more than 60% of our staff is eligible to retire in the next five years. Succession planning is imminent. DELEG has commenced work to address this issue.

Since the Bureau of Employment Relations was established more than 40 years ago, we have experienced a continuous reduction in the number of employees on our staff. In 1983, 46 employees worked at our Bureau. This number has steadily declined; in 1992, we employed 40 employees, while by 1998 our numbers had been reduced to 28 employees. We remained at 28 until the 2002 retirements, after which, we were left with 23.5. After the transfer of our ALJs and one support staff to SOAHR and the addition of one FTE, our current organizational chart includes 21.5 positions. Our challenge is to provide timely responses to requests for basic services as required by statute with this continuous depletion of staff and reduced legislative allocation. A chart indicating the steady and continuous decline in Bureau staff is attached.

To continue to provide statutorily-required dispute resolution services with our current or a reduced budget and to provide a quality panel of outside decision makers. We need a stable, increased funding stream in order to more efficiently meet our customer needs and to ensure that we may continue to provide all of our statutorily-mandated services to our constituents in a timely manner.

We need to increase the daily rate of \$650 paid to our panel of neutral decision makers in our Act 312 Arbitration and Fact Finding procedures (the \$650 rate has been in effect for more than 10 years), and to locate a stable, increased funding stream for all of the services provided by our agency.

By way of background, Act 312 of 1969 and Fact Finding are dispute resolution procedures provided by MERC, and both are mandated by state statutes, MCL 423.231, et seq and MCL 423.25, respectively. Act 312 provides for compulsory arbitration of unresolved contract

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 114 Boards and Commissions **PROGRAM:** Employment and Labor Relations

disputes in municipal police and fire departments. Employees covered under Act 312 include municipal police officers and firefighters, as well as emergency medical personnel and emergency telephone operators employed by municipal police or fire departments. Under Act 312, if the parties are unable to reach voluntary resolution of their contract terms, a three-member arbitration panel issues an award based on criteria set forth in the statute. The award establishes the terms of the parties' collective bargaining agreement in the public safety arena.

Fact Finding is the final impasse resolution procedure available to public sector employees under MERC's jurisdiction - other than public safety personnel. If bargaining and mediation have failed to result in a final collective bargaining agreement, either or both parties may petition for fact finding. The neutral fact finder, following a process set forth in MERC Rules, will issue a non-binding recommendation for settlement of the contractual dispute.

In 1999, the daily rate paid to our neutral decision makers in Act 312 and Fact Finding proceedings was increased from \$450 to \$650. For more than 10 years, our panel members have not had an increase in their daily rate. The current per diem of \$650 is significantly below what neutrals receive for their services in the private sector which frequently exceeds \$1,000 per day. At this time, many "neutrals" handle MERC-related cases as a public service and as a favor to the agency. It is essential that the daily rate, as well as the amount allowed for reimbursable expenses be increased if we want to obtain a high quality panel of decision makers.

In sum, we need a stable and increased funding stream for all of the dispute resolution services that our agency provides in order to more efficiently and ably meet our customer needs. This will permit us to increase the daily rate paid to our independent panel of arbitrators and fact finders and will assist in ensuring that we are able to attract the most competent decision makers to our panel.

CHARTS

- Case Filings for Unfair Labor Practice charges, Compulsory Arbitration (ACT 312) and Fact Finding petitions for FY08- FY10.
- Increases in Fact Finding Petition Filings, FY05 - FY10
- Staff Organizational chart, FY10 to present

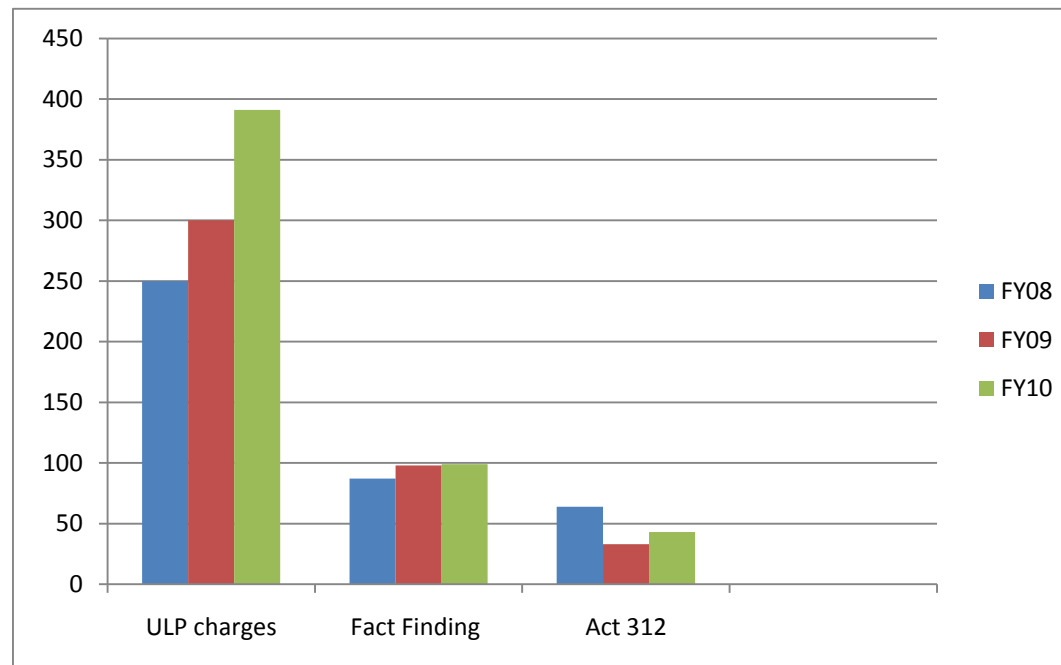
FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: (Leave Blank)

PROGRAM: Bureau of Employment Relations

Agency Case Filings (3 areas)



FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: (Leave Blank) **PROGRAM:** Bureau of Employment Relations

Increase in Fact Finding Petitions Filed

