

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION

APPROVED AMENDED MINUTES
REGULAR MEETING OF AUGUST 13, 2013
DETROIT, MICHIGAN

The meeting of the Employment Relations Commission was called to order at 10:02 a.m., by the Commission Chair, Edward D. Callaghan, at MERC's Detroit Office, 3026 W. Grand Boulevard, Suite 2-750, Detroit, Michigan.

Those in attendance: Edward D. Callaghan, Commission Chair; Commissioner Robert S. LaBrant and Commissioner Natalie P. Yaw; Ruthanne Okun, Bureau Director; Lynn Morison, Staff Attorney; James Spalding, Mediation Supervisor; John Valenti, Administrative Law Specialist; Mediators Micki Czerniak and Sidney McBride; Verna Miller, Departmental Specialist; Travis Calderwood, Administrative Law Specialist; Carl Wexel, Law Clerk and Nancy Pitt, Executive Secretary.

Public in Attendance: Kevin Loftis, POAM.

The agenda of the regular MERC meeting of August 13, 2013 was amended to move to the September 10 MERC meeting, consideration of the draft in the matter of ***Faust Public Library and- Michigan AFSCME Council 25, AFL-CIO***, Case No. R09 D-053. It was moved by Commissioner LaBrant and seconded by Commissioner Yaw to adopt the agenda of the regular meeting of August 13, 2013 as amended. A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

MINUTES

It was moved by Commissioner Yaw and seconded by Commissioner LaBrant to adopt the minutes of the regular MERC meeting of August 13, 2013 as proposed. A vote was called on the motion. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

DIRECTOR'S REPORT

The Act 312 and Fact Finding Reports were reviewed and discussed. Updates were reported by the Director. Proceedings regarding several bargaining units in the Genesee County fact finding cases are being consolidated. The City of Detroit cases are being held in abeyance pending direction from the Attorney General's office on how to proceed with the various cases in light of the bankruptcy filing. There are currently 20 Act 312 cases with 5 issued, settled or

dismissed (or otherwise disposed of) and 42 fact finding cases with 7 issued, settled or dismissed (or otherwise disposed of).

The Administrative Law Judge Reports were reviewed and discussed.

The Event Report was reviewed.

The Representation and Election Reports were reviewed and discussed. Updates were reported by the Director.

The Representation Case Activity Report was reviewed and discussed.

The Mediation Report for the Detroit and Lansing offices was reviewed and discussed. Mediation Supervisor Jim Spalding stated that he would like to combine the separate statistics of each office into one total for both offices.

The Work Stoppage Report was reviewed.

The Appellate Report was reviewed. There are no MERC cases pending before the Michigan Supreme Court

ADMINISTRATIVE AGENDA

Sidney McBride was recognized for his recent promotion to a Labor Mediator position.

Significant/critical cases – Updates were reported by the Director on City of Allen Park, and its public safety bargaining units; City of Detroit/EM & all units; Detroit Water & Sewerage Department; Jackson Community College; Redford-Union School District and on other significant/critical cases. It was noted that a ULP had been filed with MERC in the Taylor School District matter.

The Act 312 Arbitrator/Fact Finder Advisory Committee meeting has been scheduled for September 10, 2013 at 1:00 p.m., in the Commission's office at 3026 W. Grand Boulevard, Suite 2-750, Detroit. The final agenda will be sent to the Commission for their review.

A draft of the Constituent Advisory Committee letter and list of prospective representatives was approved for mailing to public sector management and public sector labor organizations requesting their participation. A mission/charge and draft agenda will be prepared and will be shared with the Commission. A meeting is anticipated to occur in November.

The General Rules and the Act 312 Rules may be completed by the end of the year. Public hearings will be scheduled at a future date before the final stage of

submission to the Office of Regulatory Reinvention and the Legislative Service Bureau.

The Open Meetings Act Amendment was revisited. Commissioner LaBrant requested that the Open Meetings Act Amendment and the Open Meetings Act Resolution be shared with Kevin Elsenheimer, the new Deputy Director, who oversees LARA's Bureau of Policy and Legislative Affairs.

The Commission moved to reaffirm the Open Meetings Act Resolution. A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

The Director reported regarding the status of and provided updates on the following pending litigation cases: *Bailey, et al v Callaghan, et al*, Case No. 12-cv-11504, *Toth v Callaghan, et al*, Case No. 12-cv-11700, *Michigan State AFL-CIO, et al v Callaghan, et al*, Case No. 13-CV-10557 and *UAW, et al v Nino Green, et al*, Case No. 314781.

The BER Lansing office is being relocated to the second floor of the Ottawa Building effective August 20, 2013. The State of Michigan Library and Historical Center, Lake Superior Room, at 702 W. Kalamazoo, Lansing is the alternate location for the November 13, MERC meeting and all future Lansing MERC meetings scheduled in 2014.

It was confirmed that the next regular Commission meeting is tentatively scheduled for Tuesday, September 10, 2013 at 10:00 a.m., in the Commission's office at 3026 W. Grand Boulevard, Suite 2-750, Detroit, Michigan.

It was confirmed that the Act 312 Arbitrator/Fact Finder Advisory Committee meeting is tentatively scheduled for Tuesday, September 10, 2013 at 1:30 p.m., in the Commission's office at 3026 W. Grand Boulevard, Suite 2-750, Detroit, Michigan.

The Lansing MERC meeting dates for 2014 were reviewed and tentatively scheduled at the State of Michigan Library, Lake Superior Room. Jim Spalding will look into the availability of the Library on the following days or on other days during the second week of every other month to accommodate the schedule of the Commissioners.

- January 14, 2014 – State of Michigan Library, Lake Superior Room
- March 11, 2014 – State of Michigan Library, Lake Superior Room
- May 13, 2014 – State of Michigan Library, Lake Superior Room
- July 8, 2014 – State of Michigan Library, Lake Superior Room
- September 9, 2014 – State of Michigan Library, Lake Superior Room
- November 11, 2014 – State of Michigan Library, Lake Superior Room

DECISIONAL AGENDA

The Commission decided the following matter:

1. ***Pontiac School District -and- Pontiac Educational Support Personnel Assn MEA/NEA -and- Michigan Assn of Police***, Case Nos. R08 H-108 & C08 G-141.

Commissioner LaBrant moved and Commissioner Yaw seconded to adopt the Decision and Order as presented. A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

The Commission discussed the following matters:

1. ***Government Employees Labor Council -and- Richard Smith***, Case No. CU10 G-036.
2. ***36th District Court -and- AFSCME Council 25***, Case Nos. C08 H-170 & C10 F-155.

NEW BUSINESS

The Department of Treasury Emergency Manager/DEP information was reviewed. Commission Chair Callaghan suggested tracking schools that are under a Deficit Elimination Plan to better equip the mediators with information when in a deficit situation. Mediation Supervisor Jim Spalding responded by stating that the availability of the information on the Department of Education website has been shared with the mediators. It was noted that a few school districts have already been dissolved and/or consolidated, such as Buena Vista and Inkster Public Schools. Director Okun stated that mediation assistance has been offered as early in the bargaining as possible in such situations in accordance with the request of the parties (in some cases) and, recently, of Director Arwood.

The Detroit Bankruptcy Order and action by the Attorney General was discussed. The Attorney General is working to advise the Michigan Employment Relations Commission concerning the bankruptcy matter and its impact on all MERC proceedings. Currently, all of the City of Detroit Act 312 cases are on hold.

OLD BUSINESS

Verna Miller provided an update on the July 2013 Dashboard Project.

An update on the MPELRA Manual was provided by the Director. Elections Officer Denise Hinneburg will be drafting an article on MERC's elections process.

Commission Chair Callaghan recognized the staff members who have volunteered to author articles for the MPELRA Manual.

It was moved by Commissioner LaBrant and seconded by Commissioner Yaw to adopt the Table of Contents of the FY2012-13 Annual Report. A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed. It is hoped that the FY2012-13 Annual Report will be ready for distribution or at least for printing by the end of the calendar year.

The web-casting of Commission meetings is still being considered. Chair Callaghan is still reviewing a less expensive means of making this occur. Sidney McBride stated that a trial run of the short version of the web-cast may be possible at a future meeting.

At the August MERC meeting, the Commission had requested to hold consideration of a prototype form letter in abeyance until they could determine the direction on how they wished to proceed. The prototype form letter was created as a response to requests to administratively dismiss pending Act 312 cases involving Employer's in receivership under PA 436. Following discussion of the matter it was moved by Commissioner Yaw to adopt the Decision and Order Granting Motion to Dismiss Act 312 Petition (Option 1) that had been prepared by staff. In such cases, where a public sector employer under receivership pursuant to PA 436 declines to participate in the 312 process, the Commission authorizes the issuance of a dismissal order based on the factors outlined in the decision in ***City of Detroit***, 27 MPER 6 (2013). A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

There was discussion regarding the continuing complaints and filings with the Michigan Employment Relations Commission by John Moralez pertaining to several older cases already resolved by this agency. The Commission agreed that the next reply to a filing by Moralez should indicate that MERC will no longer respond to future filings by Moralez on these matters.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further business before the Commission at this time, it was moved by Commissioner Yaw and seconded by Commissioner LaBrant that the meeting be adjourned at 11:18 a.m. A vote was called on the motion. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.