

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FISCAL YEAR 2018 ANNUAL REPORT
(October 1, 2017 through September 30, 2018)



Prepared by Bureau of Employment Relations Staff
Adopted: November 14, 2018

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INTRODUCTION

MESSAGE FROM THE COMMISSION CHAIR

On behalf of the members of the Michigan Employment Relations Commission (MERC), I am pleased to present our 2017-2018 Annual Report. This report is prepared to assist our constituents responsible for facilitating harmonious labor-management relations. It is also designed to promote the interrelated interest of the public, the employee and the employer. In this vein, we are committed to conducting all of our activities with transparency and accountability.

For a more than a half-century, the Public Employment Relations Act (PERA), administered by the Bureau of Employment Relations has guided labor and management representatives in Michigan as they seek to resolve their labor disputes and negotiate collective bargaining contracts. The provisions of PERA, coupled with high caliber professionals in the labor relations community, have provided stability for employers and labor organizations, alike.

Consistent with the Bureau's mission and as reflected in this Report, the Bureau successfully completed the priorities of providing collaborative bargaining and training programs for labor and management representatives. The Bureau consistently and successfully achieved the goals set forth in its Dashboard metrics utilized to measure the agency's key objectives. Our outreach MERC Basics program focuses on the fundamentals of public sector labor relations in Michigan and the services provided by the Bureau. In addition, "collaborate to contract" training was made available upon request of labor and management entities. These successful training programs were due in large part to the capable leadership of Mediation Supervisor James Spalding and the hard work of our Mediation Division, along with the partnerships they have nurtured with both management and labor organizations.

Mediation services offered by this agency were pivotal in maintaining employment stability and assisting the parties to reach voluntary resolution in both collective bargaining and grievance disputes. Our Mediation staff continues to be instrumental in assisting parties in public safety disputes, resulting in fewer petitions for Fact Finding and Act 312 Arbitration. Our mediators have also worked collaboratively with school districts and municipalities that have faced a financial emergency, consistent with the requirements of Michigan's public school deficit elimination plan legislation. Moreover, management and labor organizations have increasingly taken advantage of no-cost Grievance Mediation services provided by the Bureau, thereby eliminating the need for costly and time consuming grievance arbitration.

Additionally, the Commission's docket of pending cases is current and up to date. The issuance of numerous decisions in Fiscal Year 2018 resolved a series of complex cases in a manner that gave clear guidance to our constituents and served to properly implement legislative action.

We have also modified and updated our procedures, forms, and website information to comply with the U.S. Supreme Court decision in *Janus and AFSCME Council 31, et al.* Also noteworthy is that we have commenced a Strategic Planning process that will cover a five-year period (2019 - 2024) and will include the insights of all our stake holders. This Plan will serve as a catalyst for

positive change compatible with our Mission Statement to foster cooperative labor-management relations across the State.

Under the capable leadership of our long-tenured Bureau Director Ruthanne Okun, Bureau staff continues to work professionally and diligently to provide excellent services in a work environment and culture that promotes cooperative labor-management relations.

As Fiscal Year 2019 commences, MERC/BER will continue to approach existing and new challenges with a continued zeal to foster positive and productive labor-management relations in workplaces throughout Michigan. We encourage you to visit the MERC web-site at www.michigan.gov/merc for updated information and to share any feedback on how we may better serve the labor-management community.

Respectfully submitted,

Edward D. Callaghan, MERC Chair

MESSAGE FROM THE BUREAU DIRECTOR

During my 20th year at the helm of the Bureau of Employment Relations/Michigan Employment Relations Commission (MERC), Bureau staff worked hard with tangible results supporting their efforts. At BER, we work alongside MERC to fulfill our mission of fostering peaceful and cooperative employer-employee relations. Bureau staff perform their jobs in a productive work environment that encourages open communication and engagement as reflected consistently by the agency's high scores in past department-wide employee engagement surveys. Staff continues to work to implement court and agency rulings regarding controversial legislative changes, including: right to work; prohibited subjects of bargaining; prohibition on retroactivity; and cost limitations on employer-provided health insurance. At the same time, staff has worked diligently to ensure that the Commission docket is up-to-date and decisions are issued expeditiously. While BER operates in a politically-charged climate, we strive to be politically neutral and to simply do our jobs to the best of our abilities.

Bureau staff is comprised primarily of long-tenured individuals; as a result, critical succession planning has been completed with valuable staff input, while long-term strategic planning is ongoing. Moreover, staff continues to expand its education and outreach activities; this includes its efforts to promote positive employment relations for constituents via the establishment of labor-management committees and training in interest-based problem solving. Staff is working hard to supplement its self-created MERC Basics training program via completion of a training piece aptly entitled "Beyond the Basics"- offering training for the more seasoned constituent. Last fall, the agency presented a mandatory training program for its panel of Act 312 (compulsory arbitration) arbitrators and fact finders. That training was well-received and ensured that panel members are adequately armed to reach reasoned and sound decisions that may significantly impact public sector employers and their unions.

Finally, BER has continued to welcome the Wage and Hour Division into the Bureau, while allowing both agencies to retain and foster their statutorily-assigned missions.

It was another successful year at BER/MERC, during which we worked to ensure that the labor relations processes in Michigan work efficiently for the parties. We are proud to provide you this Annual Report and even prouder of its contents and the hard work that it reflects. We trust that the coming year will be similarly productive, and thank you all for providing us with the forum to share our achievements with you.

Ruthanne Okun, Director
Bureau of Employment Relations

COMMISSION MEMBERS

MERC CHAIR EDWARD D. CALLAGHAN

Edward D. Callaghan was appointed Chair of the Michigan Employment Relations Commission on June 20, 2011 and was re-appointed on June 6, 2014, and, again, on October 3, 2017. Dr. Callaghan served as a full-time faculty member at Oakland Community College (OCC) from 2005 to 2015 and is currently an Adjunct Professor at OCC and Walsh College. He previously served as President of OCC's Orchard Ridge campus and as Vice Chancellor for Human Resources and College Communications. Chair Callaghan has negotiated labor contracts in the public sector for more than 30 years representing public employers, including: the Dearborn Public Schools, Wayne County Community College, Henry Ford Community College and Oakland Community College.

Dr. Callaghan's extensive collective bargaining experience includes: handling MERC elections, unfair labor practice claims, and mediation cases. He has also served as an Act 312 arbitrator for police and fire municipal disputes and as a fact finder for governmental units in Michigan – both on behalf of the Michigan Employment Relations Commission.

Chair Callaghan earned a Ph.D from the University of Michigan, an MBA from Wayne State University, and a B.S. from the University of Detroit.

MERC Chair Callaghan's current appointment is for a 3 year term expiring on June 30, 2020.

MERC COMMISSIONER ROBERT S. LABRANT

Robert S. LaBrant was appointed a member of the Michigan Employment Relations Commission on July 1, 2012 and was re-appointed on May 27, 2015, and again, on July 28, 2018.

Commissioner LaBrant previously was employed as Senior Vice President and General Counsel at the Michigan Chamber of Commerce before retiring in 2012. Post-retirement, Mr. LaBrant served as Senior Counsel at the Sterling Corporation until 2017.

Before moving to Michigan in 1977, Commissioner LaBrant worked at the Appleton, Wisconsin Area Chamber of Commerce, the Metropolitan Milwaukee Association of Commerce and the

Business-Industry Political Action Committee. Commissioner LaBrant was on the staff of Congressman Harold V. Froehlich of Wisconsin. He was a Captain in the U.S. Army with service in Viet Nam in 1971-72.

Commissioner LaBrant holds a juris doctorate, *cum laude*, from Western Michigan University's Thomas M. Cooley Law School in Lansing, Michigan. He completed his graduate certificate in public relations from the American University in Washington, DC, and received his bachelor's degree from the University of Wisconsin in Stevens Point, WI.

Commissioner LaBrant has served as an adjunct faculty member at Lansing Community College and at the Thomas M. Cooley Law School. He was admitted to State Bar of Michigan in 1983.

Commissioner LaBrant's appointment is for a 3 year term, expiring on June 30, 2021.

MERC COMMISSIONER NATALIE P. YAW

Natalie P. Yaw was appointed a member of the Michigan Employment Relations Commission on June 25, 2013 and was re-appointed on June 9, 2016. Commissioner Yaw has several years' experience in business law, both from a litigation and a regulatory perspective. Currently, she is a partner at Erskine Law, PC, in Rochester, where she focuses her practice on commercial litigation for corporate clients.

Commissioner Yaw previously served as Vice President and Senior Counsel at Citizens Financial Group, Inc., and as an attorney at Dickinson Wright, PLLC, where she specialized in commercial and consumer lender liability litigation. She is a member of the State Bar of Michigan and serves as Vice Chancellor for the Episcopal Diocese of Michigan. She has a bachelor's degree from Rice University and a juris doctorate, *summa cum laude*, from Michigan State University College of Law.

Commissioner Yaw's current appointment is for a 3 year term, expiring on June 30, 2019.

MERC HISTORY

The Michigan Employment Relations Commission (MERC or the Commission) is an independent agency charged with administering various laws governing labor-management relations throughout the State of Michigan. The Commission is comprised of three members, one of whom is the designated chairperson, appointed for staggered 3-year terms by the Governor with the advice and consent of the Senate. No more than two members may be of one political party. MERC, formerly known as the Michigan Labor Mediation Board, was established in 1939 pursuant to the Labor Relations and Mediation Act (LMA).

MERC administers two principal statutes: the Public Employment Relations Act, Act 336 of 1947 (PERA), and the Labor Mediation Act, Act 179 of 1939 (LMA). These statutes grant collective bargaining rights to public (PERA) and private (LMA) sector employees within the State of Michigan, except for employees in state classified civil service, the federal government, and those within the exclusive jurisdiction of the National Labor Relations Board (NLRB). MERC also administers the compulsory arbitration process available to municipal police and fire department employees (Act 312 of 1969) as well as to state police troopers and sergeants (Act 17 of 1980).

Chairs of the Michigan Employment Relations Commission, from 1960-2018, are as follows:

- Allen D. Chisholm 1960-1962
- Malcolm R. Lovell, Jr. 1963-1964
- Robert Howlett 1965-1975
- Charles Rehmus 1976-1980
- Morris Milmet 1980-1983
- William M. Ellmann 1983-1986
- David S. Tanzman 1986-1991
- Joseph B. Bixler 1991-1993
- Maris Stella Swift 1994-2003
- Honora J. Lynch 2003-2006
- Christine A. Derdarian 2006-2011
- Edward D. Callaghan 2011-present

BUREAU OF EMPLOYMENT RELATIONS

The Bureau of Employment Relations (the Bureau or BER) is housed within the Michigan Department of Licensing and Regulatory Affairs (LARA). BER is the administrative arm of the Commission. MERC/BER activities are conducted through two separate divisions -- the Labor Relations Division and the Mediation Division. The Labor Relations Division assists in resolving unfair labor practice charges (ULPs) and union representation matters (e.g., bargaining unit determinations). The Mediation Division assists with settling disputes involving contract negotiations and grievances in the public and private sectors. Other services provided by BER

include: fact finding; compulsory arbitration; grievance arbitrator selection; last offer elections; establishing labor-management committees; and training in collaborative negotiations.

Mission Statement

The mission of the Michigan Employment Relations Commission is 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.

Bureau Directors from 1971 through 2018:

- Hyman Parker 1971-1975
- Robert Pisarski 1975-1980
- Barry Hawthorne, Acting Director 1980-1983
- Shlomo Sperka 1983-1998
- Ruthanne Okun 1998-present

Supervision of Wage and Hour Division

In FY 2016, the Wage and Hour Division in LARA became a division in the Bureau of Employment Relations – working along-side of the Bureau’s labor relations and mediation divisions. With that transfer, Bureau Director Ruthanne Okun and Mediation Supervisor James Spalding assumed oversight over the Wage and Hour Division and guided and facilitated its full integration into BER. Both agencies remain mindful of retaining their separate missions and goals.

STAFF BIOGRAPHIES:

Ruthanne Okun, BER Director has been in the field of labor and employment relations for the past 37 years. She graduated *magna cum laude* from Michigan State University and from Notre Dame Law School, where she was the Assistant Legislative Research Editor of the Journal of Legislation. Prior to attending law school, Director Okun served as the Personnel & Employee Relations Director of Larden Company, with facilities in Davisburg, Michigan and Plymouth, Indiana. Director Okun was employed for nearly 5 years with the law firm of Miller, Canfield, Paddock & Stone in its labor and employment relations department and was a partner at the Riverview law firm of Logan, Wycoff and Okun, PC. Since 1998, she has served as the Bureau Director and supervises staff located in Detroit, Lansing, and out-state areas, including staff of the Bureau’s Wage and Hour Division. Finally, she also serves as legal advisor to the Commission. Director Okun is a member of the State Bars of Michigan and Illinois.

Miles Cameron has been a Labor Mediator with the Bureau of Employment Relations since July of 2008. Prior to joining the Bureau, he had been an active member of the United Steelworkers since 1978 and held many positions in his local union including; Safety Chair, Steward, Committee Man, Negotiations Chair, Grievance Chair, Educational Coordinator and President. In 1995, he began working as a staff representative for the United Steelworkers with duties that included

representing members in arbitrations, settling grievances, negotiating contracts and other responsibilities.

Jim W. Corbin joined the mediation staff in April, 1999. Prior to joining the Bureau, Jim held positions in State Service and in the private sector including: Deputy Director of the Office of Human Resources and Labor Relations for the Michigan Department of Labor, Director of Labor Relations for the Michigan Family Independence Agency and co-founder and owner of CDET, Inc., a Michigan company specializing in customized employment and job training programs. Jim received his Bachelor of Science Degree and Master's Degree in Labor and Industrial Relations from Michigan State University. He served on the Board of Directors of the Michigan Labor-Management Association and as a past president of the Alumni Board of Directors of the MSU School of Labor and Industrial Relations. Jim retired in January, 2018.

Micki Czerniak has been a Labor Mediator with the Bureau of Employment Relations since 1998, and with state government since 1988. Prior to coming to the bureau, she served as the state's Compensation Specialist with the Department of Civil Service where she managed the Employment Relations Board's Impasse Resolution and Coordinated Compensation Proceedings. Prior to joining state government, Ms. Czerniak was employed by Sachs, Waldman, et al., during which time, she testified as an expert witness on subjects of compensation and benefits in more than 20 Act 312 and other arbitration proceedings. Ms. Czerniak has a B.A. from MSU and an M.A. in Industrial Relations from Wayne State University.

Ed Eppert has been with the Bureau of Employment Relations since 2004 as a labor mediator in the Upper Peninsula, where he lives with his family. His previous work experience has been balanced between management and labor, including retail, education, and other government service. He has held Teamsters, RCIA and MEA union cards, serving 17 years in school union leadership roles while a teacher/coach. He then was a school superintendent for 11 years. He later worked several years promoting small business growth at the county level through Michigan State University. He holds a B.A. from MSU majoring in economics, an MBA from Central Michigan University and an Ed. Specialist Degree in School Administration from Northern Michigan University.

Maria Greenough has been a staff court reporter for the Bureau of Employment Relations since 1982. Prior to coming to the bureau, Maria was a freelance reporter affiliated with several court reporting firms in the southeast Michigan area, handling medical malpractice and auto negligence matters for insurance companies. She has a BA in Business from Cleary Business College; her certifications include Registered Professional Reporter and Certified Stenograph Reporter.

Denise A. Hinneburg has been employed by the Bureau of Employment Relations since 1996. She came to the Bureau as a Governor's Management Intern and became an Elections Officer in 1998. Prior to joining the Bureau, Denise had experience as a Human Resource Generalist, Academic Advisor and Placement Director. Denise received a Bachelor of Arts Degree from Michigan State University and received a Masters of Arts in Industrial Relations from Wayne State University.

Tracy Marr is the Mediation Secretary for the Lansing BER office and provides secretarial support to the Elections Officer in Detroit. She has been in this position since August, 2015. Tracy returned to State service in 2008 as a legal secretary for the MAHS Administrative Law Judges

and in 2013 became a shared service Legal Secretary with BER. Before returning to State service, she worked as a Legal Secretary in private practice and the office manager to a family owned construction business; she still performs the latter responsibility.

Wanda Mayes has been a Labor Mediator assigned to the Detroit office of the Bureau of Employment Relations since 2000. Her educational background includes a bachelor of science in business administration (1985), a master of arts in industrial relations (1998), and a juris doctor (2016), all from Wayne State University. Her career in Labor Relations began in 1988 with the City of Detroit's labor relations division. There she was responsible for negotiating labor contracts; conducting grievance hearings and preparing written responses; advising department human resources officers concerning grievance and contract administration; preparing and presenting arbitration cases before arbitrators and umpires; and coordinating unfair labor practice and election petitions with the Michigan Employment Relations Commission (MERC).

Sidney McBride joined the Bureau of Employment Relations in 2009 and currently serves as a Labor Mediator. Before becoming a mediator, he worked as an Administrative Law Specialist with responsibilities that included drafting Commission decisions, administering the Act 312 and Fact Finding programs and conducting election matters. Prior to coming to MERC, Sidney worked at the Third Circuit Court in management and labor (AFSCME) roles that included, in part, collective bargaining, grievances, arbitrations and MERC proceedings. He is an active member of the State Bar of Michigan, and a member of the Bar's Labor and Employment Law Section. He graduated from Wayne State Law School in the top third of his class.

D. Lynn Morison is the Staff Attorney for the Bureau of Employment Relations, having previously worked for the Bureau as an administrative law judge. Before joining the Bureau in 2001, she was a staff attorney for the Michigan Employment Security Board of Review. Prior to working for the state, she was on the faculty of Michigan State University where she taught business law and published two articles on labor law topics. She is a Fellow of the College of Labor and Employment Lawyers and a Fellow of the American Bar Foundation. She is a member of the Labor and Employment Law Section of the American Bar Association and is the Neutral Co-chair of the Section's State and Local Government Bargaining and Employment Law Committee. She is also a member of the Labor and Employment Law Section of the State Bar of Michigan, the Black Women Lawyers Association of Michigan, and the Wolverine Bar Association. Ms. Morison received a B.A. from Michigan State University, a J.D. from the University of Michigan, and an LL.M. in labor law from Wayne State University.

Barbara Norris joined the Bureau in 1981 and currently is the longest serving member of the Bureau of Employment Relation's staff. She functions as mediation division secretary in the Detroit Office. Before coming to MERC, she worked in the Wage and Hour Division of the then Department of Labor. Barbara has a degree from George C. Wallace State Junior College & Technical Institute in Selma, Alabama.

Ashley M. Rahrig joined the Bureau of Employment Relations in 2014 and currently serves as the Bureau's Departmental Analyst. Prior to her employment with BER, Ashley worked as an HR Specialist with Imetris Corporation and as the Lead Paralegal in a law firm specializing in family law. In 2009, Ashley earned her B.S. from Eastern Michigan University, majoring in Paralegal Studies, and in 2012, earned her Master's Degree in Public Administration with a concentration in

Human Resources from Wayne State University. Ashley is also an active member of the Labor and Employment Law Section of the State Bar of Michigan.

Nancy Pitt performs secretarial and executive support activities for the Director of the Bureau of Employment Relations and members of the Michigan Employment Relations Commission. She began her employment with MERC in 1982 and with the State of Michigan in 1977 as a typist with the Department of Social Services. In 1979, she accepted a position as secretary to the Manager of the Detroit Regional Office of the Department of Civil Service. In 1982, she moved to the Department of Labor, Bureau of Employment Relations to provide administrative support services to the Executive Assistant and the Commission.

James Spalding has been the Mediation Supervisor for the Bureau of Employment Relations since September, 2012, and a Labor Mediator since October, 1992. Formerly, he was Assistant Director of Labor Relations for the Michigan Association of School Boards (1986-1992); Business Representative for the International Union of Operating Engineers, Local 547 (AFL-CIO) (1982-1986); Federal Aviation Administration, Air Traffic Controller (1977-1981) and President of the Professional Air Traffic Controllers Organization (PATCO), Local 375 at the time of the 1981 PATCO air traffic controllers' strike. Jim served seven years in the U. S. Air Force (1969-1976) and held the rank of Staff Sergeant. He was elected to the Delhi Township Park Commission in 1984, re-elected in 1988 and 1992 and served as Chairperson of the Park Commission from 1989 to 1996. Mr. Spalding studied at Lansing Community College, earning an Associate Degree in Business, Personnel/Labor Relations, *magna cum laude*.

Deborah Stewart joined the Bureau of Employment Relations in 2011 with over 25 years of legal experience that included 16 years with the law firm of Kelley Casey, P.C. (f/k/a Kelly, Casey & Moyer P.C.) where she served as Legal Secretary/Paralegal/Assistant Operations Manager. In this multi-faceted role, she developed and implemented a training program, including a manual for incoming legal secretaries. She also assisted in managing all facets of the office support administration including IT and employee-related matters. At MERC, she provides support to a diverse set of functions in the labor relations division and mediation division (Act 312 and fact finding).

Robert Strassberg has been a Labor Mediator since January of 2009. He previously headed the Bureau's Election Department for 12 years. In that capacity, Bob supervised and conducted two of the largest elections in MERC history. Prior to joining the Bureau of Employment Relations, Bob was a Personnel Director (Knopow Industries) Management Labor Relations Consultant (primarily in the health care industry) and a labor representative. Bob has a B.A. from Wayne State University and also attended WSU's MAIR Program (Masters Industrial Relations Program).

Fred Vocino has been a Labor Mediator with the Bureau of Employment Relations since October 2009. From 1991 to 2009, he held a staff position with the Michigan Nurses Association (MNA). There, he conducted contract negotiations/administration and grievance arbitration, assisted with policy development and led in mediation and ULP proceedings. Before 1991, he was an elected UAW official at Wayne State University. In his academic studies at Wayne State (B.F.A.), he developed an appreciation for alternative dispute resolution principles, the application of which he regularly practiced while at the MNA. Fred serves in the Grand Rapids area and covers southwest Michigan.

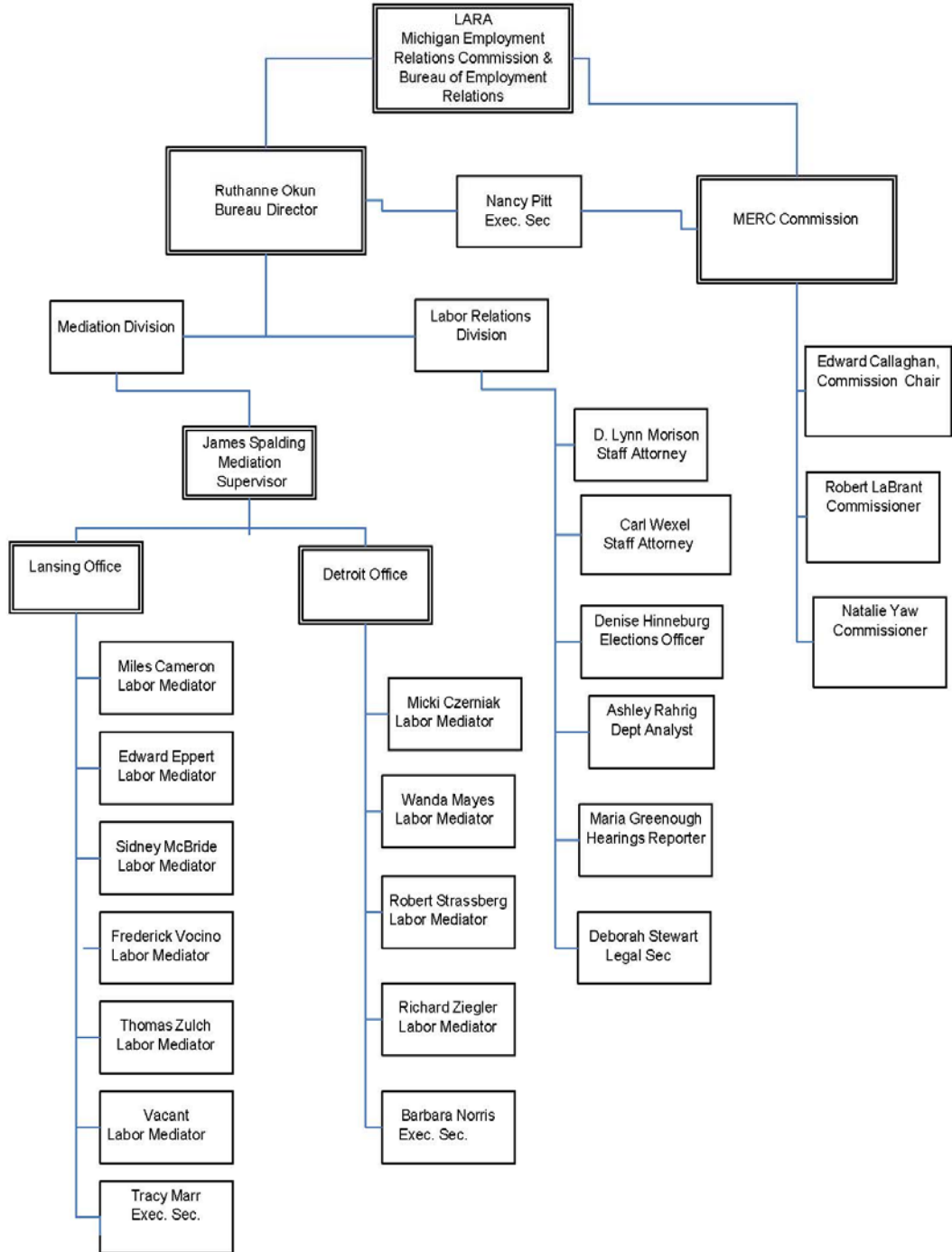
Carl Wexel works as a Staff Attorney/Administrative Law Specialist for the Bureau of Employment Relations/Michigan Employment Relations Commission and was previously employed by the Bureau as a law clerk beginning in 2013. Prior to law school, he was employed as a Director of Labor Relations for CSX Corporation, where he handled contract negotiations and administration, and as a Field Examiner for the National Labor Relations Board. He is a member of the Labor and Employment Law Section of the State Bar of Michigan. Mr. Wexel has a B.A. with High Distinction from the University of Michigan, a Masters of Industrial and Labor Relations from Cornell University and a J.D. from Wayne State University.

Richard Ziegler has been a mediator with the Bureau of Employment Relations since 1997. From 1982 to 1997, he worked as a field representative (business agent), for the Fraternal Order of Police, Labor Council/Police Officers Labor Council. From 1968 to 1982, he worked as a police officer in the cities of Detroit and Wixom. While working as a police officer, he served in several union positions, including: executive board member of the Detroit Police Officers Association and Secretary and Vice President of the AFSCME police local in Oakland County. Rich has a B.A. in Law Enforcement and Business Administration from Mercy College of Detroit and an M.A. in Industrial Relations from Wayne State University.

Tom Zulch joined the Bureau of Employment Relations as a Labor Mediator in 2017. Prior to joining the Bureau, he was senior staff attorney for the Police Officers Labor Council from 2004 through 2017, handling all legal matters including critical incidents, contract and discipline arbitrations, Act 312 and Fact Finding cases. Tom was appointed to serve as Commissioner on the Michigan Commission on Law Enforcement Standards. In addition, Tom served as an attorney for the Detroit Police Officers Association from 1999 to 2004. He was a Public Safety Officer for the City of Berkley from 1987 to 1998 serving as the President of the Berkley Police Officers' Association for 6 years. Tom was in the last graduating class from the Detroit College of Law in 1997 prior to it relocating to Michigan State University.

ORGANIZATIONAL CHART

As of September 30, 2018



MICHIGAN ADMINISTRATIVE HEARING SYSTEM (MAHS)

With the creation of the State Office of Administrative Hearings and Rules (SOAHR) in 2005, Michigan became the State with the largest centralized hearings panel in the nation. Under an Executive Order, SOAHR was renamed as the Michigan Administrative Hearing System (MAHS) in early 2011. The mission of MAHS is to serve the citizens of the State of Michigan with fair, efficient, and unbiased decisions. Three Administrative Law Judges from MAHS are exclusively assigned exclusively to conduct MERC hearings related to union representation matters and unfair labor practice charges.

MAHS Administrative Law Judges (ALJ)

ALJ Julia C. Stern is assigned exclusively to cases arising under the State's collective bargaining statutes, the Public Employment Relations Act (PERA) and the Labor Mediation Act (LMA). She has been involved in the administration of these statutes for more than 31 years. ALJ Stern received her undergraduate and law degrees from the University of Michigan and University of Michigan Law School. She was employed as a field examiner in Region 7 of the National Labor Relations Board from 1973-1976, and in private practice as an attorney representing employers in the private sector before coming to work for MERC in 1981. She served as staff attorney for MERC from 1981 to 1997 and has been an ALJ with the State since 1997.

ALJ David M. Peltz has been hearing cases on behalf of MERC since 2001. Prior to that, he was employed by MERC in the capacity of Legal Specialist to the Commission. Mr. Peltz was previously on the faculty at Michigan State University Law School where he taught Legal Research, Writing, and Advocacy. From 1994 to 1997, ALJ Peltz worked as a Research Attorney with the Michigan Court of Appeals in Detroit. He received a B.A. from the University of Michigan and a J.D. from Wayne State University. Mr. Peltz was a contributor to and assistant editor of the MERC publication-- *A Guide to Public Sector Labor Relations in Michigan*. He has often been a presenter on matters pertaining to public sector labor law to outside organizations, including to the State Bar of Michigan's Labor & Employment Law Section.

ALJ Travis Calderwood began hearing cases on behalf of MERC in May of 2014. He previously was employed at the Bureau of Employment Relations as an Administrative Law Specialist beginning in 2013, handling matters related to the "Freedom to Work" laws. Prior to joining the Bureau, Travis was employed at the law firm of Collins & Blaha, P.C. in Farmington Hills, where he represented numerous public school districts in all areas of employment and labor law, as well as in state and federal compliance and regulatory issues. ALJ Calderwood attended Hillsdale College where he earned numerous scholarships and awards and graduated with a B.A. in Political Economy. He received his law degree from Ava Maria School of Law in Ann Arbor, where he was awarded a full tuition scholarship. ALJ Calderwood is a member of the State Bar of Michigan.

STATUTORY OVERVIEW

JURISDICTION AND STATUTORY AUTHORITY

MERC administers the following statutes:

- Public Act 176 of 1939, the Labor Relations and Mediation Act (LMA) – regulates collective bargaining relationships between private sector unions and small private sector employers not falling within the jurisdiction of the National Labor Relations Act.
- Public Act 336 of 1947 as amended, the Public Employment Relations Act (PERA) – grants all public employees within the State of Michigan excluding classified civil service employees of the State and employees of the federal government the right to organize and be represented by labor organizations of their choice and to refrain from such activities.
- Public Act 312 of 1969 as amended by PA 116 of 2011, the Compulsory Arbitration Act (Act 312) – provides for compulsory binding arbitration of labor-management disputes involving public police and fire department employees.
- Public Act 17 of 1980 – provides for compulsory binding arbitration of labor-management disputes involving the State of Michigan and the Michigan State Police Troopers and Sergeants.

KEY LEGISLATIVE CHANGES AND ENACTMENTS

Since 2011, collective bargaining in Michigan (primarily public sector) has been greatly impacted by several amendments to PERA, the LMA and Act 312, and by other legislative changes that affect the Commission's administration of these three statutes. The scope of these legislative changes is broad and includes such areas as:

- Expanded the prohibited subjects of bargaining for employees subject to the Revised School Code and the Teachers' Tenure Act, including discipline, discharge, evaluation, layoff, and recall (2011 PA 100-103);
- Placed limits on employer contributions to employee health care costs (2011 PA 152);
- Imposed restrictions on giving pay and benefit increases to employees after contract expiration (2011 PA 54);
- Changed the compulsory arbitration process for Act 312-eligible police and fire department employees (2011 PA 116);
- Expanded the ability of public employers to consolidate or transfer services (2011 PA 258-263);
- Set forth Union audit filing requirements (2011 PA 53);
- Enacted Right-to-Work laws (2012 PA 348 and 349);
- Re-defined emergency manager laws (2012 PA 436);
- Excluded Act 312-eligible employees from the provisions of Act 54 (2014 PA 322);

- Changed the union audit filing requirement (2014 PA 414);
- Changed Commission procedures in cases involving allegations of public school strikes and lockouts (2016 PA 194); and
- Exempted the Commission from the requirements of the Open Meetings Act when deliberating the merits of a case (2016 PA 504).

The Commission continues to issue decisions interpreting the effects of the changes resulting from the above-listed legislative enactments. (See the ULP section beginning on page 20). An updated chart of these legislative changes, annotated with a brief description and references to related MERC decisions, appears on the agency's website at www.michigan.gov/merc.

UNITS OF GOVERNMENT IN FINANCIAL DISTRESS

2012 PA 436 (The Local Financial Stability and Choice Act)

The Local Financial Stability and Choice Act (2012 PA 436) became effective on March 28, 2013. Upon the confirmation of a finding of a financial emergency in a local unit of government, as defined by 2012 PA 436, the local government may select from certain options, which include entering into a Consent Agreement negotiated with the State Treasurer or the appointment by the Governor of an Emergency Manager. A material uncured breach of the Consent Agreement may result in the Governor placing the local government in receivership.

A local government operating under the terms of a Consent Agreement is not subject to Section 15(1) of 1947 PA 336 (PERA) and, therefore, has no duty to bargain with the representatives of its employees for the term of the Consent Agreement.

The Governor also may appoint an Emergency Manager to address a financial emergency within a local unit of government. An appointed Emergency Manager has broad powers and acts for and in the place and stead of the governing body and the office of the chief administrative officer of the local government. Among the powers of an Emergency Manager is the power to reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. In addition, a local government placed in receivership is not subject to Section 15(1) of 1947 PA 336 (PERA) and, therefore, has no duty to bargain with the representatives of its employees for a period of five years from the date on which the local government is placed in receivership or until the time that the receivership is terminated, whichever occurs first.

Before removing a local government from receivership, the governor may appoint a receivership transition advisory board to monitor the affairs of the local government until the receivership is terminated.

Emergency Manager Appointments and Consent Agreements¹

Michigan public schools operate on a fiscal year of July 1 through June 30 of the following calendar year. The data in the MERC FY 2018 Annual Report for public school districts covers the period from July 1, 2017 to June 30, 2018, subject to final audit.

At the opening of FY 2018 (10/1/17), three municipalities and five public school districts within MERC's jurisdiction were operating under the control of an Emergency Manager or under a Consent Agreement. In addition, six municipalities were in receivership with a Transition Advisory Board at the helm.

At the close of FY 2018 (9/30/2018), no municipality was operating with an Emergency Manager. Two public school districts within MERC's jurisdiction were operating under a Consent Agreement. In addition, one school district was in receivership with a Transition Advisory Board at the helm. One municipality was operating with oversight by a Financial Review Commission.

Deficit School Districts²

The Michigan Department of Education is required to issue quarterly reports to the legislature on school districts with year-end deficits (in deficit at the close of the fiscal year) and the district's progress in reducing those deficits. The Michigan Department of Education reported 19 school districts and public school academies in deficit at the close of FY 2017, down from the 29 districts in deficit at the close of FY 2016.

The State Department of Education's final quarterly report ending June 30, 2018 reflected 19 districts that ended FY 2017 in a deficit position. The status of those districts at the close of FY 2018 follows, subject to final audit:

- 6 deficit districts projected elimination of their deficit in FY 2018.
- 10 districts projected a reduced deficit.
- 1 district closed its doors at the end of FY 2018.
- 2 districts eliminated their deficits with school operating taxes.

One school district that began FY 2018 with a positive fund balance is projected to end the fiscal year in deficit.

Early Warning Legislation³

Public Acts 109-114 of 2015 provide the Michigan Department of Treasury additional financial authority over public school districts, intermediate school districts and public school academies. The legislation included provisions allowing school districts to obtain assistance from their Intermediate School District and the Department of Treasury prior to facing a financial emergency.

¹ State of Michigan, Department of Treasury, Emergency Manager Information Report, August 14, 2018.

² State of Michigan, Department of Education Quarterly Report to the Legislature on Deficit Districts, June 14, 2017 and June 1, 2018.

³ 2015 PA 109; 2015 PA 110; 2015 PA 111.

Public Act 109 requires the State Treasurer to determine whether or not potential fiscal stress currently exists or may exist during the current school fiscal year (July 1 – June 30) or the following two fiscal years, and whether the district or academy may be unable to meet its financial obligations and still provide educational services in compliance with state law. If that determination is made, the public school district, intermediate district or academy has 60 days in which to enter into a contract with an intermediate school district or the “authorizer” of a public school academy (as provided for in the statute).

Public Act 110 of 2015 requires the Department of Treasury to conduct a preliminary review for school districts subject to a Deficit Elimination Plan that exceeds five years. Of the 25 districts that were in deficit on June 30, 2016, 14 remain under Treasury’s oversight.

2018 – School Districts with Potential Fiscal Stress⁴

Pursuant to MCL §141.1544(2), the Department of Treasury conducts a preliminary review to determine the existence of probable financial stress for all school districts subject to a Deficit Elimination Plan that provides for the elimination of the deficit over a period exceeding 5 years.

In 2017, 8 districts were declared to have the potential for fiscal stress. In FY 2018, 7 districts were declared to have the potential for fiscal stress, down 1 from the prior year. By the end of FY 2018, 2 academies had closed and 5 districts remain under Department of Treasury oversight.

Enhanced Deficit Elimination Plans

Pursuant to MCL §380.1220(5), a school district, intermediate school district (ISD), or public school academy (PSA) currently operating under a Deficit Elimination Plan (DEP) that has not completely eliminated its deficit within five years after the initial DEP was submitted to Michigan Department of Education is required to submit an Enhanced Deficit Elimination Plan (EDEP) to the Department of Treasury. A school district, ISD, or PSA may also be required to submit an EDEP if they are determined to be subject to rapidly deteriorating financial circumstances, persistently declining enrollment, or other indicators of financial stress.

These districts are required to submit an EDEP for Department approval. In addition to providing an EDEP, these districts must provide additional cash flow and budget-to-actual reporting on a monthly basis in a form and manner approved by the Department.

Since 2015, 13 districts have been subject to a preliminary review or Enhanced Deficit Elimination Plan reporting. Of the 13 districts, 5 of these districts have eliminated their general fund deficits and are no longer subject to Department oversight, and 8 remaining school districts were operating under enhanced deficit elimination plans during FY 2018.

Financial stress in municipalities and public school districts directly impacts the mission of the Michigan Employment Relations Commission and the Bureau of Employment Relations. During FY 2018, as in the last several years, collective bargaining continued to be difficult, especially with some school districts facing enhanced financial reporting requirements due to the early

⁴ State of Michigan, Department of Treasury, Quarterly Report to the Legislature on Deficit Districts, August 14, 2018.

warning legislation referenced previously. Wage increases continued to be offset by increased employee cost sharing for health care and retirement benefits. Bureau mediation staff continued to face difficult circumstances while striving to assist the parties in reaching settlements.

To assist the mediation staff, an updated Department of Treasury Emergency Manager Information Report and a Department of Education Deficit School District Report are submitted monthly to the mediation staff, and to the Michigan Employment Relations Commission for review and consideration at each of its regular meetings.

MERC PROCESSES

REPRESENTATION PETITIONS AND ELECTIONS

MERC Representation Proceedings

The Public Employment Relations Act (PERA) provides all public employees in Michigan with the right to organize and be represented by a labor organization of their choice. Section 15 of PERA provides that a public employer shall bargain collectively with a representative of its employees. The Commission is authorized to conduct representation proceedings to determine an exclusive collective bargaining representative.

Representation Petitions

A petition for representation proceedings (R petition) is used to determine a collective bargaining representative, to decertify an existing bargaining representative, or to clarify a position(s) when an employer and labor organization disagree on the placement of a newly-created or substantially changed position. Aside from voluntary recognition by an employer, the determination of a bargaining representative can occur by one of three procedures: Consent Election, Commission Directed Election or Unit Clarification. The R petition has five distinct sub-types to choose from: **Certification of Representative (RC)**, used when a group of employees wish to be represented by a union or association or change to a new representative or to accrete historically excluded position(s) into the bargaining unit; **Decertification (RD)**, used when a group of employees in a bargaining unit assert that their current representative no longer maintains majority support and they no longer want to be represented by it; **Self Determination (SD)**, when a union representing multiple bargaining units under the same employer wants to merge the separate units into a single bargaining unit; **Representation (Employer) (RM)**, filed by an employer when multiple labor organizations claim to be the collective bargaining representative of the same unit of employees; and **Unit Clarification (UC)**, used to determine placement of a new or substantially changed position established after a unit has been certified. With a UC petition, the Commission reviews the record and issues an order resolving the dispute over the placement of the contested position or positions. No balloting or election occurs with a UC petition.

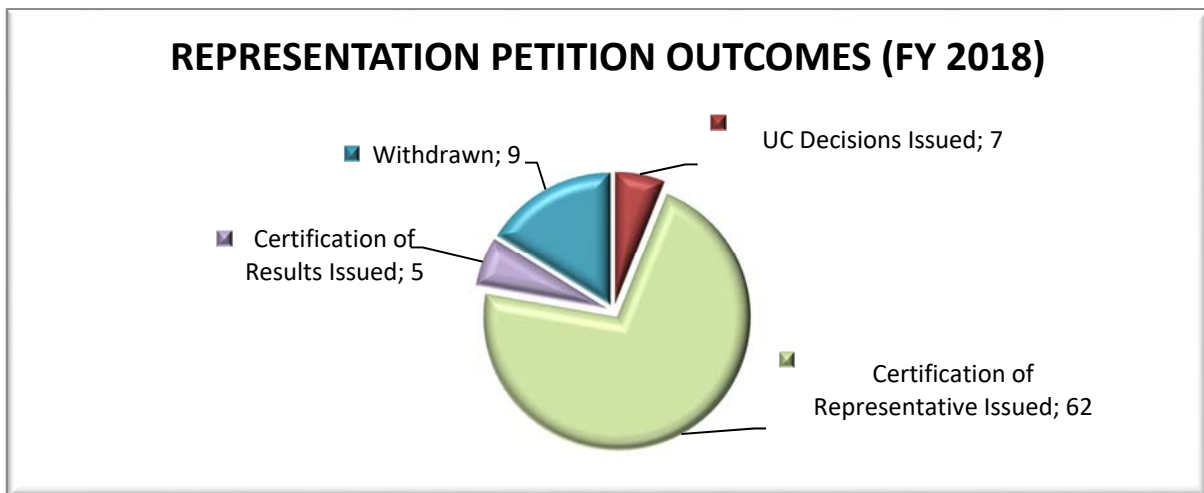
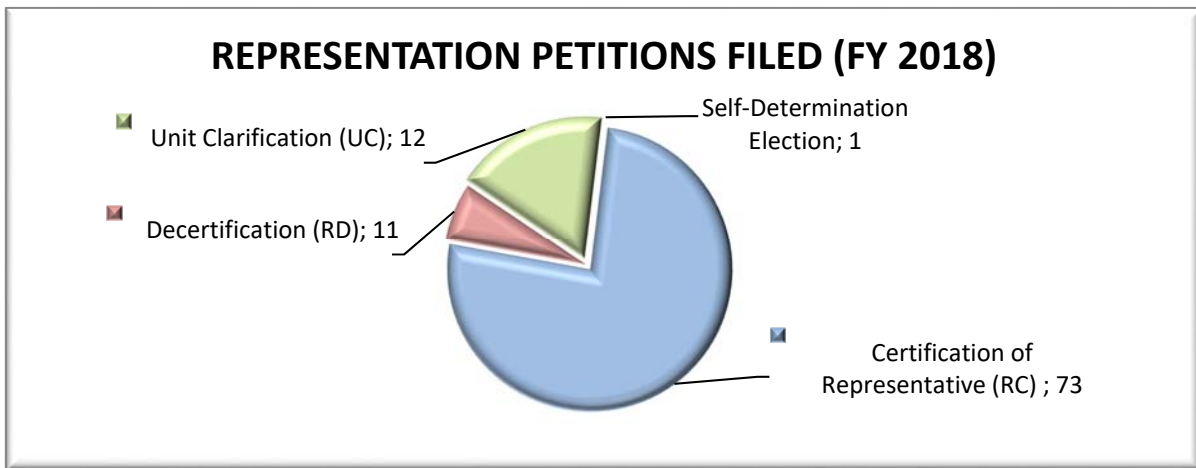
Consent Elections or Commission Directed Elections

There are two different types of elections conducted by MERC. A Consent Election is one where no disputed issues exist, and the parties authorize MERC to conduct an election. Conversely, a Commission Directed Election occurs when disputes remain, and the parties are unable to agree to a Consent Election. The dispute is referred to an ALJ for a factual and legal determination. Based

on the ALJ's findings, the Commission reviews the record and either directs an election or dismisses the petition.

Election Outcomes

When a labor organization receives a majority of the valid ballots cast in a representation election, the Commission issues a **Certification of Representative** declaring that entity as the exclusive representative of the bargaining unit. If no labor organization receives a majority of the valid ballots cast or the election results in a tie, MERC issues a **Certification of Results** indicating that no bargaining representative was certified. During FY 2018, the following representation petition activity occurred:



UNFAIR LABOR PRACTICES – FY 2018

PERA and the LMA establish grounds for a party to file an unfair labor practice charge (ULP or charge) against an employer (C case) and/or labor organization (CU case). After a charge is filed with MERC, if it states a claim under MERC's jurisdiction, it is transferred to an ALJ at the Michigan Administrative Hearing System (MAHS) to make a factual and legal determination on whether the allegations establish a violation of the applicable Act. The ALJ may conduct a formal hearing as part of this process. Based on the evidence and arguments presented in the record, the ALJ issues a written decision and recommended order that contains findings of fact, conclusions of law, reasons for those conclusions, and the ALJ's recommended order for disposition of the case.

If a party files an appeal of the ALJ's decision (referred to as "exceptions"), those exceptions are reviewed by the Commission. The Commission will issue its own decision and order that affirms the ALJ, reverses the ALJ in whole or in part, or remands the matter for further factual findings. If no exceptions are filed, the Commission issues a final order adopting the ALJ's decision as its own.

During FY 2018, case activity routinely involved charges filed by employers, labor organizations, and individuals asserting violations of the duty to bargain, the duty of fair representation, discrimination, and the right to engage in or refrain from protected concerted activity.

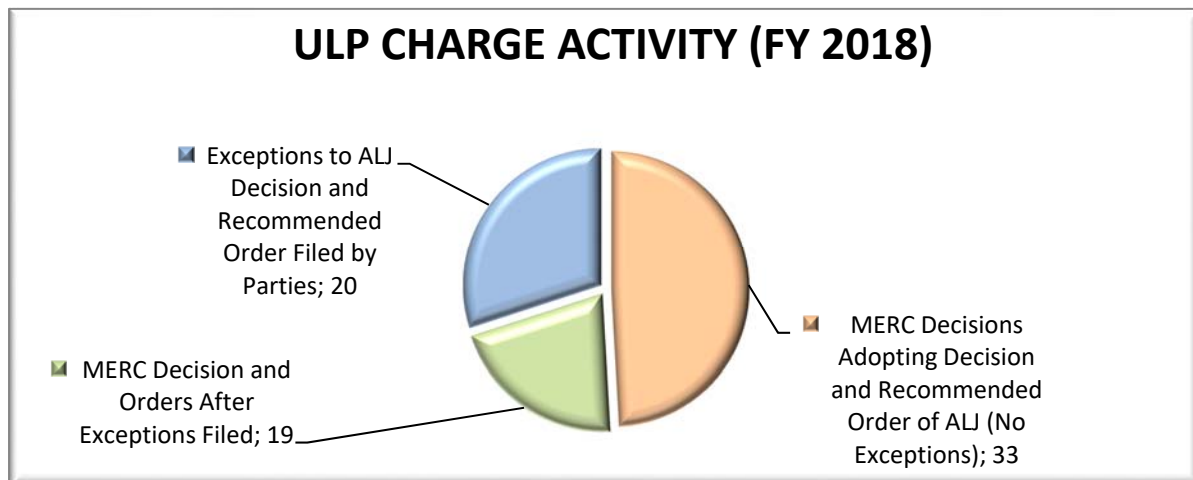
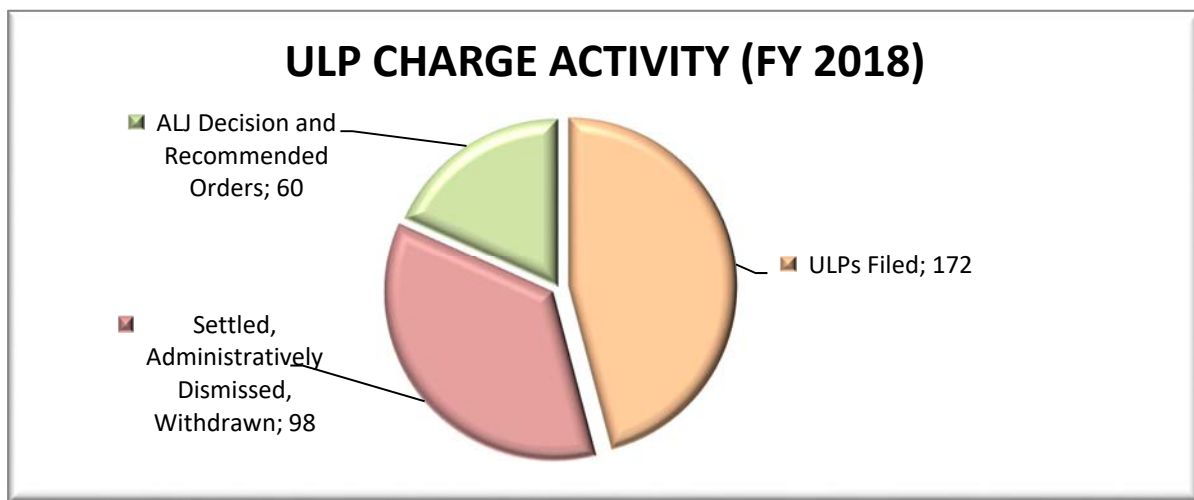
In *Kent County and Kent County Sheriff -and- Kent County Deputy Sheriffs Association*, 31 MPER 35 (2017), Case No. C16 F-062, issued December 18, 2017, the parties' collective bargaining agreement provided that the employees would pay a designated amount for health insurance. That amount was based on health care costs for active employees bundled with healthcare costs for pre-65 retirees. When the contract expired, the employers passed on the increase in that amount to the active employees pursuant to § 15b of PERA. The union contended that the increase was unlawful because it was based on increases in the health care costs for active employees bundled together with increases in the health care costs for pre-65 retirees. The Commission found, however, that nothing in PERA expressly prohibits public employers from basing the employees' share of health insurance costs on bundled active employee health care costs and pre-65 retiree health care costs. Therefore, the Commission dismissed the charge for failure to state a claim upon which relief can be granted under PERA.

In *Hurley Medical Center -and- Office and Professional Employees International Union, Local 459*, 31 MPER 41 (2018), Case No. C16 D-042, issued February 14, 2018, the Commission found that the Employer did not violate § 10(1)(e) of PERA when it unilaterally ceased to provide performance wage increases to employees after the Union became certified as their exclusive representative. Contrary to the ALJ, the Commission held, based on longstanding Commission precedent, that where wage increases in the past were "discretionary," i.e., not governed by any practice or pattern as to timing or amount, an employer is not required or allowed to give a wage increase without bargaining with the union. Consequently, the Commission found that the Employer was not obligated to implement the discretionary performance increases provided for by its Salary Administration Plan in 2015 or 2016. This case is currently on appeal to the Michigan Court of Appeals.

In *Macomb County Clerk -and- International Union, UAW Region 1, Local 412*, Case No. C17 C-023, issued July 18, 2018, the Commission held that certain remarks made by the Respondent Macomb County Clerk to a member of the bargaining unit represented by Charging Party were threatening and coercive and violated § 10(1)(a) of PERA. In its decision, the Commission noted that threatening an employee with retaliation for filing or signing a grievance was destructive of rights guaranteed to the employee by § 9(1)(a) of PERA. The Commission also found nothing in the record to support Respondent’s contention that she was deprived of due process.

MERC decisions, including case summaries, are posted on the agency’s website located at www.michigan.gov/merc. You may also find information on the agency’s website regarding the current status of the cases on appeal.

ULP activity at MERC during FY 2018 is reflected in the following charts:



“FREEDOM” (RIGHT) TO WORK (FTW)

In December 2012, Michigan enacted “Freedom (Right) to Work” laws with the passage of Public Acts 348 and 349 of 2012. Public Act 348 amended the Labor Relations and Mediation Act (LMA) and applies to most private sector employees, while Public Act 349 amended the Public Employment Relations Act (PERA) and applies to most public sector employees. Both laws became effective on March 28, 2013, and make it unlawful to require an employee to join a union or pay union dues or agency fees as a condition of obtaining or continuing employment.

Under FTW laws, covered employees have the right to voluntarily choose to do, or not to do, any of the following:

- Organize together or form, join, or assist in labor organizations;
- Engage in lawful concerted activities for the purpose of collective negotiation, bargaining or other mutual aid and protection; and
- Negotiate or bargain collectively with their employers through representatives of their own free choice.

Statutory Construction of FTW by MERC

During FY 2018, the Commission reviewed issues involving the application of 2012 PA 349 in the following two cases.

In *Michigan Education Ass’n -and- Ann Arbor Education Ass’n -and- Ronald Robinson*, 31 MPER ___ (2018), Case No. CU16 B-008, issued April 17, 2018, the Commission found that the Respondent Unions violated § 10(2)(a) of PERA by demanding that Charging Party pay agency fees after he resigned from union membership. The Commission noted that, in the absence of a lawful union security clause, demanding that a former union member pay agency fees unlawfully restrains or coerces that employee in the exercise of his § 9 right to refrain from financially supporting a union. The Commission further found that the union security provision in the Union’s collective bargaining agreement with Charging Party’s Employer did not condition Charging Party’s continued employment on payment of agency fees and, therefore, did not violate § 10(3) of PERA. Because it did not violate § 10(3), the union security provision was not lawful under § 10(5) of PERA.

In *Ann Arbor Education Ass’n -and- Jeffrey Finnan -and- Cory Merante*, 31 MPER ___ (2018), Case Nos. CU15 K-040 & CU16 B-006, issued April 13, 2018, the Commission found that the Union violated § 10(2)(a) of PERA by demanding that Charging Parties pay an agency fee after they resigned their union memberships. In the absence of a lawful union security clause, demanding that public employees pay agency fees unlawfully restrains or coerces those employees in the exercise of their § 9 rights to refrain from financially supporting a labor organization. The Commission also found that the union security provision in the Union’s collective bargaining agreement with Charging Parties’ Employer did not condition Charging Parties’ continued employment on payment of agency fees and, therefore, did not violate § 10(3). Because it did not violate § 10(3), the union security provision was not lawful under § 10(5) of PERA.

At the time of the preparation of this report, both of the above cases are on appeal to the Michigan Court of Appeals.

Additionally, the U.S. Supreme Court issued its decision in *Janus v AFSCME, Council 31, et al*, 585 U. S. ____; 138 SCt 2448; 86 USLW 4663 (2018), on June 27, 2018. In that case, the Court found that it is unconstitutional for public employees to be required to pay agency fees to the labor organization representing their bargaining unit. Although Michigan became a Right-To-Work state in 2013, Bureau staff reviewed MERC decisions and publications for compliance with *Janus*. Upon doing so, we determined that some language in some of the Commission's Right-To-Work decisions and in summaries of those decisions may not be consistent with *Janus*. Accordingly, we have posted notices on pages of the Commission website warning of the possibility that language in some Commission Decisions may be inconsistent with *Janus*. To the extent that language is inconsistent with *Janus*, it should not be relied upon. We have also revised the *Guide to Public Sector Labor Relations Law in Michigan*, the Freedom to Work Frequently Asked Questions, and the Michigan Freedom to Work in the Public Sector Informational Poster on our website to ensure that the information contained therein comports with *Janus*.

Detailed information regarding Michigan's FTW laws and the impact on MERC's processes can also be found on the agency's website located at www.michigan.gov/MERC.

MEDIATION – CONTRACT AND GRIEVANCE

Mediation Overview

When Michigan's Labor Relations and Mediation Act (LMA) was enacted in 1939, it authorized employees working in the State's private sector, not covered by the National Labor Relations Act, to organize and engage in collective bargaining. The LMA sets forth a public policy statement supporting the use of mediation services through a governmental agency to aid parties in the voluntary resolution of workplace disputes and to avoid labor strikes and lockouts in private sector employment. With the enactment of the Public Employment Relations Act (PERA) in 1965, public employees were afforded the right to organize, and the mediation services established under the LMA were extended to public sector employment in Michigan.

The Mediation Division of the Bureau of Employment Relations (BER) assists employers and unions in the settlement of disputes involving contract negotiations and grievances in both the public and private sectors. Other services provided by the mediation division include: fact finding; compulsory arbitration; grievance arbitration; last offer elections; creating and participating in labor-management committees; and training in collaborative negotiations.

Contract Mediation

Section 7 of PERA authorizes the labor organization or the public employer to request that the Commission intervene and mediate matters, including disputes concerning negotiation of labor agreements and the alleged violation of a labor agreement. Mediation is a non-binding process in which a neutral third person assists the parties to resolve their dispute. In collective bargaining, the parties should seek to resolve as many issues as possible on their own; however, when it becomes apparent to one or both parties that they are unable to reconcile their differences or are

not making adequate progress towards doing so, labor mediation may be appropriate. PERA discusses the mediation process and provides: “At least 60 days before the expiration date of a collective bargaining agreement, the parties shall notify the Commission of the status of negotiations.” Private sector entities also must file with the Commission, as the National Labor Relations Act requires a 60-day notice to both federal and state mediation agencies. Thereafter, a mediator will be assigned to the case, and the parties are provided with the contact information for the assigned mediator should mediation be needed.

Grievance Mediation

Mediation is often used to resolve grievances arising under a collective bargaining agreement, either as the final step in the grievance procedure or as a step prior to arbitration. A mediator is generally available within a few weeks of the request for mediation assistance. The process is flexible, since the parties may develop a remedy without being bound by the contract language as an arbitrator would be. If the contract language is ambiguous, a mediator may assist in developing a mutually agreeable resolution to the dispute. A mediator has no authority to render a binding decision. Parties are able to avoid the expense and rigidity of the grievance arbitration process by mutually resolving contract grievances with the aid of MERC labor mediators. Also, of great importance, mediated settlements avoid the, often, contentious environment of an arbitration hearing and can have a significant impact on preserving a harmonious relationship between the parties.

Mediation Activity FY 2018

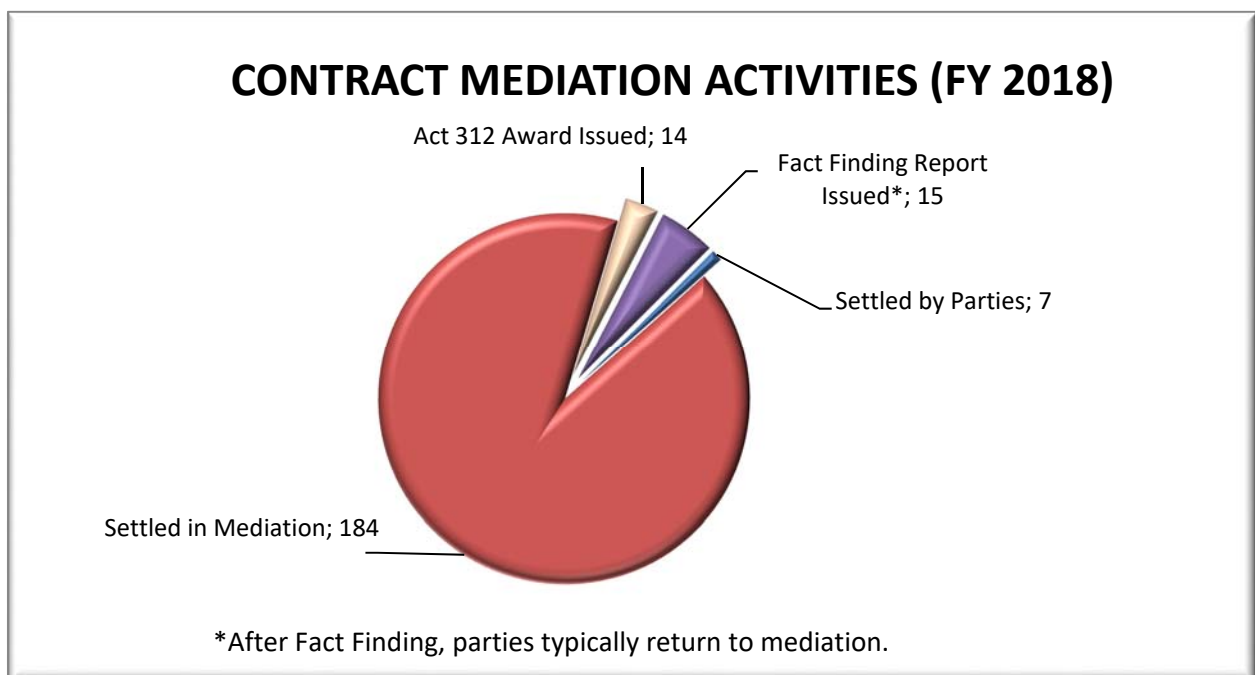
During FY 2018, the Mediation Division received and processed 2,042 Status of Negotiations notices indicating that a collective bargaining agreement is open for negotiations. Mediation assistance was initiated in 224 of those negotiations resulting in 656 mediation conferences. In addition, the Mediation Division received 326 requests for mediation assistance in contract grievances. There were 322 grievance mediation conferences. Mediator involvement resulted in the settlement of 185 collective bargaining agreements and 298 contract grievances, with some settled cases related to carry-over activities of disputes initiated in the prior fiscal year. (See charts that follow). These numbers reflect a steady level of grievance mediation activity throughout the fiscal year. It is notable that, at over 90%, a remarkably high percentage of grievances mediated during FY 2018 were settled in mediation, avoiding the significant costs of arbitration in both dollars and the time required to prepare and present a case in arbitration. A more detailed description of grievance mediation can be found below.

During FY 2018, unions continued to be under pressure from their membership to settle contract negotiations early. The 2011 PA 54 amendments to PERA eliminated the possibility for retroactive wage increases from all but Act 312-eligible public sector settlements. In addition, PA 54 requires public sector employees to pay any increased cost in health insurance following expiration of a collective bargaining agreement and until a successor agreement is executed. Prior to PA 54, retroactive payment of negotiated wage increases was commonplace, and employers typically absorbed the increased cost of health insurance during the period of negotiations. Responding to the changes brought by PA 54, unions now are more often attempting to engage in earlier bargaining and, consequently, earlier mediation as they attempt to reach a satisfactory settlement prior to contract expiration. A settlement prior to contract expiration avoids a potentially significant financial impact on the bargaining unit members following contract expiration and until a successor contract is in place.

In addition to this, some bargaining units have historically been comprised of employees who are eligible for Act 312 arbitration and some employees who are not eligible, (e.g., police officers vs. corrections officers). Under Public Act 322 of 2014, employees who are eligible for Act 312 arbitration (e.g., police officers) are exempt from the provisions of 2011 PA 54, prohibiting retroactivity after contract expiration. As a result, in mixed bargaining units, some employees can receive full retroactivity of negotiated increases and salary schedule step advancement, while others are prohibited from receiving retroactivity. At contract expiration, those employees not eligible for Act 312 arbitration are responsible for paying 100% of health insurance cost increases until a successor agreement is executed, while the Act 312-eligible employees are not. During FY 2018, there were again instances where Act 312-eligible employees were willing to hold out for a potentially better settlement through Act 312 Arbitration, without tangible financial risk. The employees not eligible for Act 312, however, faced immediate financial loss upon contract expiration, creating friction within the bargaining unit and within the bargaining team.

Therefore, those employees not eligible for Act 312 arbitration, if frustrated by the slow pace of negotiations and the significant financial impact imposed on them at contract expiration, could withhold union dues. They could do so without fear of retaliation since they were no longer compelled to financially support the labor organization representing them. Internal struggles within a bargaining team often land at the feet of the mediator, who must find a way to pull the competing factions together to create viable proposals for settlement. This is sometimes a vexing challenge at best. In some mixed units, the union and the employer have found it advantageous to split the bargaining unit along lines of Act 312 eligibility and ineligibility and to negotiate separate agreements.

The graph below charts how contract labor disputes were resolved during FY 2018 and reflects the effectiveness of the Mediation Division during FY 2018, with the vast majority of cases settled in mediation:



Grievance Mediation

The Michigan Employment Relations Commission/Bureau of Employment Relations, encourages labor and management representatives to consider utilization of the grievance mediation service available through the Mediation Division, at no cost to the parties. Grievance mediation is a voluntary, informal process using a skilled labor mediator to assist the parties in reaching a mutually acceptable resolution to a grievance dispute when there is an alleged violation of a collective bargaining agreement.

MERC mediators have an extensive background in contract administration and, typically, have handled numerous grievance disputes – some involving arbitration. By mutual agreement between the employer and the union or when included as a step in the contract’s grievance procedure, both parties present the basis of their position to the mediator. The mediator will become familiar with all aspects of the case and will seek to assist the parties to reach a satisfactory settlement that will resolve the dispute. An experienced mediator may also take an unbiased look at the dispute and share a neutral perspective on the parties’ respective positions. A mediator’s assessment of the weak points in a case or clarification of the underlying issue of the grievance may prompt one or both parties to view the dispute in a different light and seek resolution in lieu of arbitration. Settlement options may include granting the grievance, withdrawal of the grievance or a compromise. Ultimately, however, settlement of the grievance is within the control of the parties. The mediator is present only as a highly skilled, confidential neutral to assist in settling the dispute or to offer suggestions and recommendations.

The many advantages to grievance mediation include:

- Expedience – faster resolution
- No Cost for the service
- Less adversarial; hence, promotes cooperation
- Not tied to a contract remedy; therefore, resolves the “real” issue
- Very effective: It works (with about a 90% success rate)

It is not unusual for an arbitration hearing to take months to schedule. After the hearing, there is frequently a 30-day time period for the parties to file post-hearing briefs. After submission of briefs, there may be a wait of at least another 30 days for an award. On the other hand, a mediation conference can usually be scheduled quickly. There are no post-hearing briefs. There is also no need to wait for a decision if the dispute is resolved during the mediation conference.

Arbitrators work independently and for a fee. Therefore, an arbitrator will charge the parties a set rate per day, plus expenses. The per diem rate is applied to time spent for travel, day(s) of hearing, reviewing post hearing briefs, research and preparation of an award. The MERC/BER Mediation Division, maintains a staff of experienced labor mediators who are available for grievance mediation without cost to the parties.

The win-lose environment of a formal binding arbitration hearing may result in each of the respective parties attacking the credibility of the other’s witnesses. The honesty of testimony is subject to challenge, potentially undermining any previously existing spirit of cooperation between labor and management.

Grievance mediation is far less formal than most arbitration hearings. During grievance mediation, the mediator will often meet with the parties separately to gain more in-depth knowledge about circumstances related to the grievance. In that more relaxed environment, the parties are free to open up and discuss the issue candidly. If the discussion leads to the issue being resolved in mediation, the resolution is reached without placing either party in the 'hot seat' and without the need to attack and destroy one another's witnesses.

A spirit of cooperation can be developed in grievance mediation. Ultimately, since the parties themselves are in control of the resolution, the grievance may be settled to the satisfaction of both parties. When labor and management come together to discuss their differences in a productive, non-adversarial (or at least less adversarial) environment, the cooperative skills and trust they develop can make their relationship stronger than before. If resolution still escapes them after an honest and sincere effort, they can then move on to arbitration with greater understanding - less as combatants and more as advocates of differing opinions.

The authority of the arbitrator comes from and is limited by the contract. An arbitrator has no authority to add to, delete from or modify the terms of a collective bargaining agreement. If the source of the dispute is rooted outside the language of the contract, an arbitrator may have authority to make an award disposing of the grievance but has no authority to resolve the underlying issue. A mediator has no binding authority and, therefore, is not limited by the contract. A mediator can be expected to ask probing questions about a dispute in an attempt to uncover the true essence of the issue. With that knowledge, the mediator will work with the parties and assist them in finding a means to resolve the issue, not just the grievance.

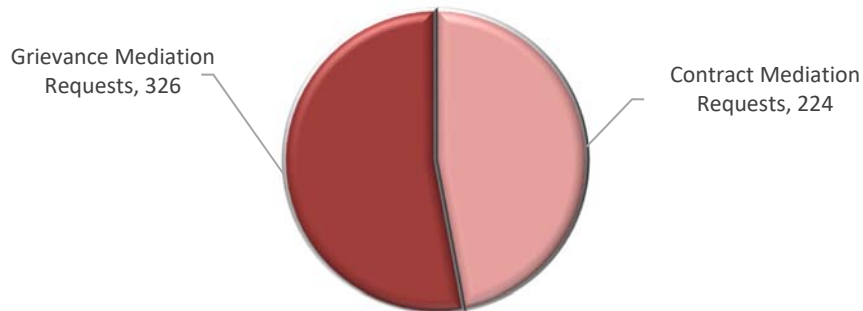
Grievance mediations are usually completed in one session, while contract mediation frequently requires numerous conferences to reach settlement due to the number and complexity of the issues. Consequently, while grievance mediation requests may compete with requests for mediation of contract negotiations, the time involved in resolving grievances is less demanding upon the workload of BER.

In an effort to promote awareness of the grievance mediation service provided by the agency, staff members consistently speak of the service during constituent presentations and training, including the MERC Basics program. Also, whenever BER receives notice that a contract is open for negotiations, along with contacting the parties with a case number and the name of the assigned mediator, the BER provides grievance mediation informational material for the benefit of the parties.

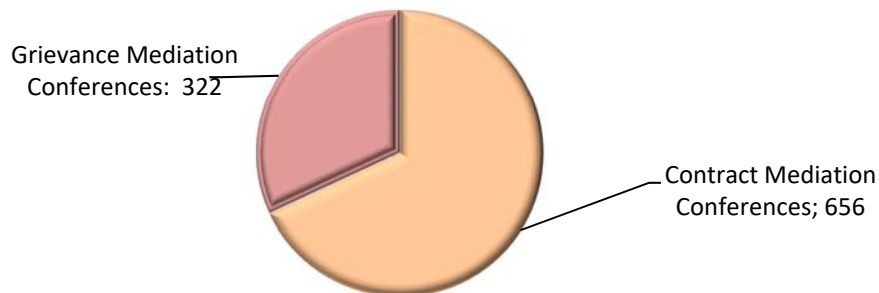
To initiate grievance mediation, either party may download and file a Request for Grievance Mediation form, found on the MERC website (www.michigan.gov/merc) under the Forms link. A mediator will be assigned and will promptly contact the parties to schedule a mediation conference.

As indicated in the following charts, as in prior fiscal years, grievance mediation has consistently grown as a popular service provided to the agency's constituents and has continued to represent a significant activity within the BER Mediation Division.

MEDIATION REQUESTS (FY 2018)



MEDIATION CONFERENCES (FY 2018)



FACT FINDING & ACT 312 COMPULSORY ARBITRATION

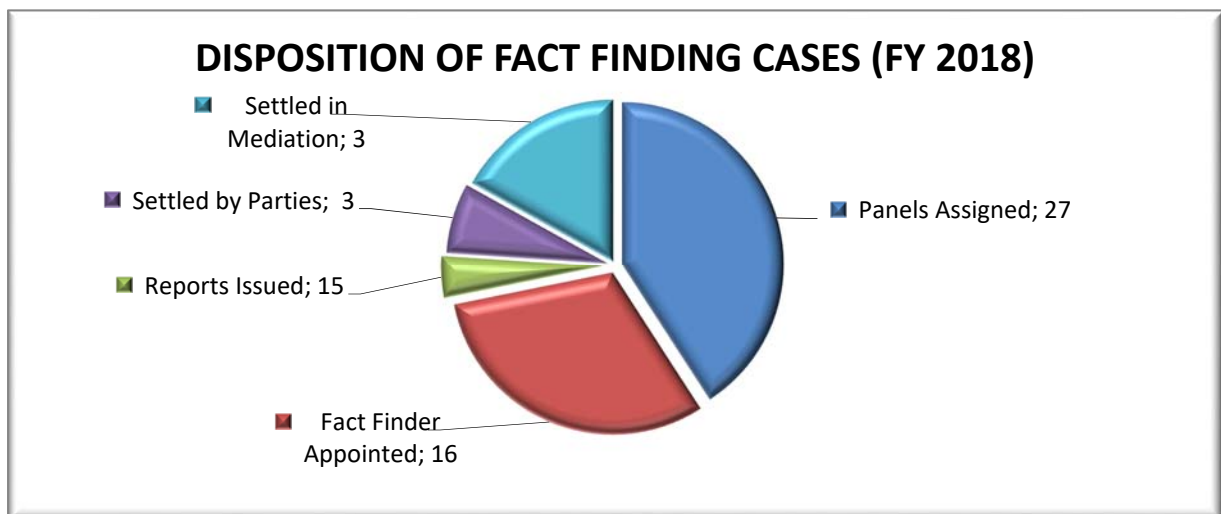
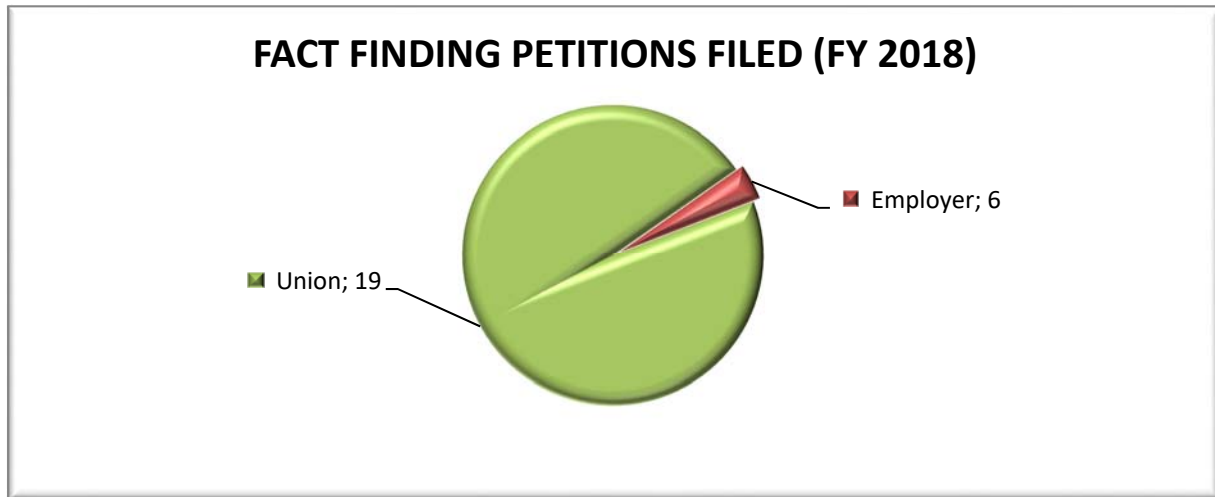
When collective bargaining and mediation assistance do not result in a complete final labor agreement, either party may file a petition for fact finding, or, if eligible, compulsory arbitration (Act 312). A neutral fact finder or Act 312 arbitrator is appointed by the Commission to conduct hearings and issue a written, non-binding recommendation (fact finding) or a binding award (Act 312).

Fact Finding

MERC fact finding is available to public sector employers and employees subject to PERA who are not eligible for compulsory arbitration under Act 312. Although the recommendation of a fact finder is not binding, it is helpful as the parties return to negotiations to resolve their differences

and, hopefully, reach contract resolution. Since labor strikes in the public sector are prohibited under PERA, fact finding is a dispute resolution procedure available to eligible public sector employees during the course of mediation, with the parties typically returning to mediation following receipt of the fact finding recommendation for settlement. The recommendation then serves as a basis to resolve the issues with the assistance of a mediator.

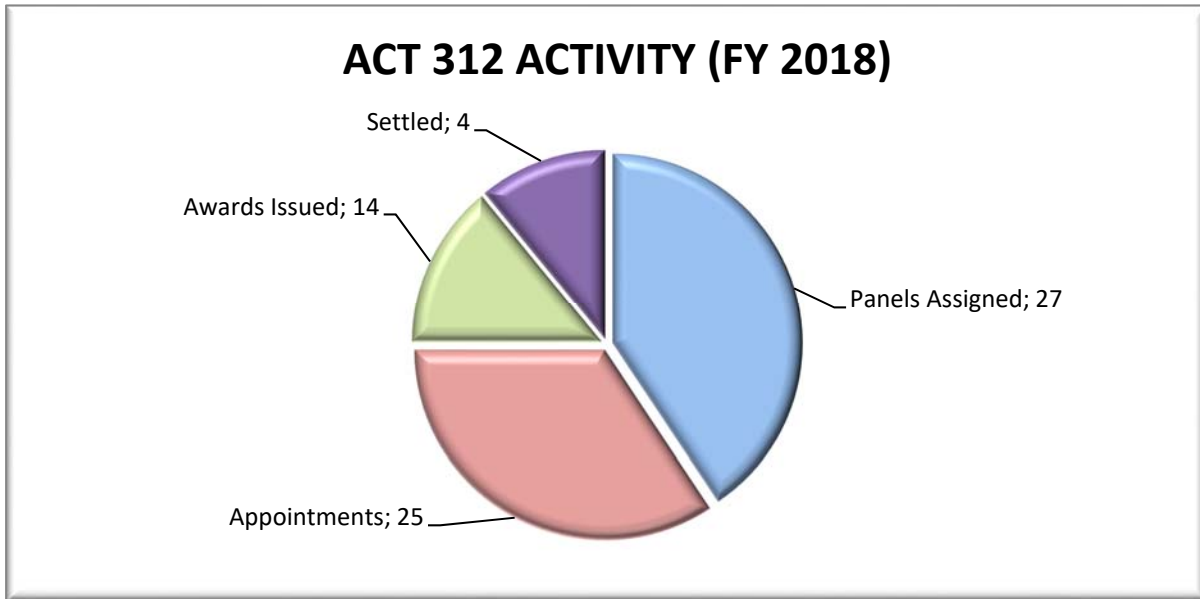
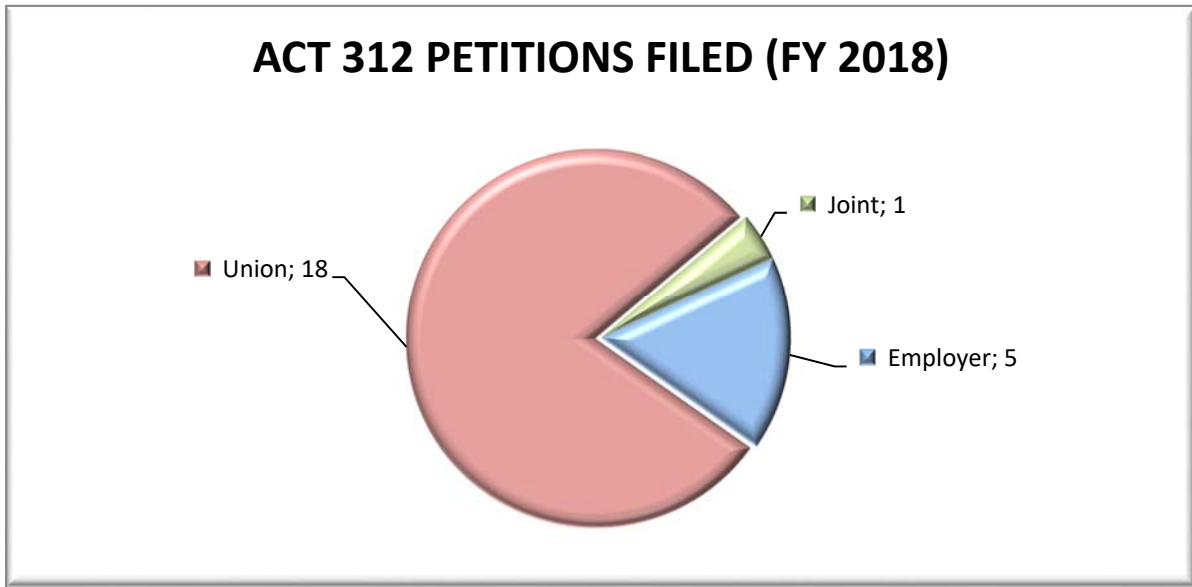
Fact finding activity during FY 2018 included:



Act 312- Compulsory Arbitration for Municipal Police and Fire Departments

In 1969, the Michigan Legislature enacted Act 312 to provide certain employees of municipal police and fire departments a binding procedure for resolving negotiations over a labor contract. In 2011, the Act was amended in various ways to expedite the process. Employees covered by Act 312 include: police officers, firefighters, emergency medical personnel as well as emergency telephone operators employed by a municipal police or fire department or certain authorities, districts or boards created by these local units of government. Act 17 of 1980 provides similar binding arbitration for state police troopers and sergeants.

Act 312 activity during FY 2018 is as follows:



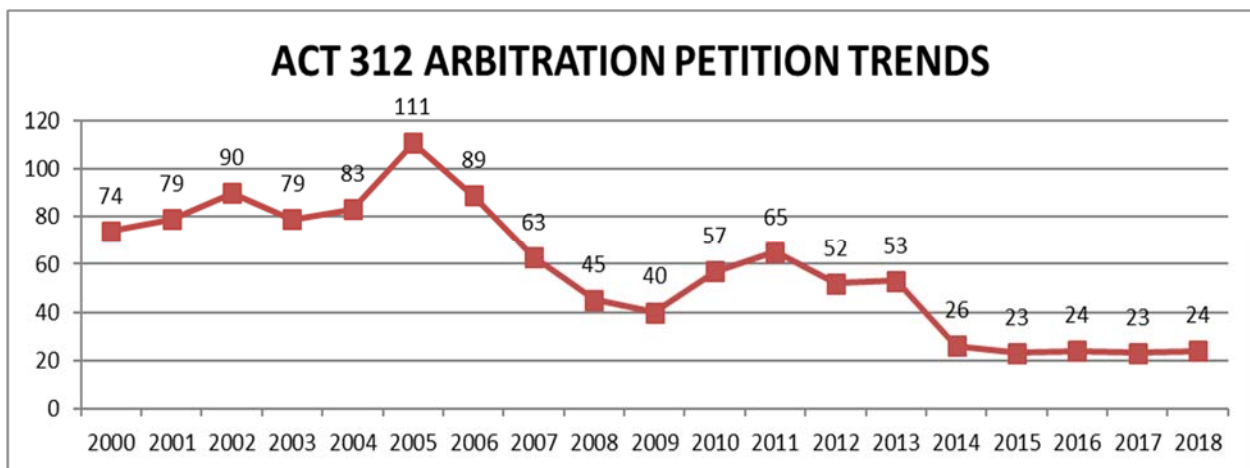
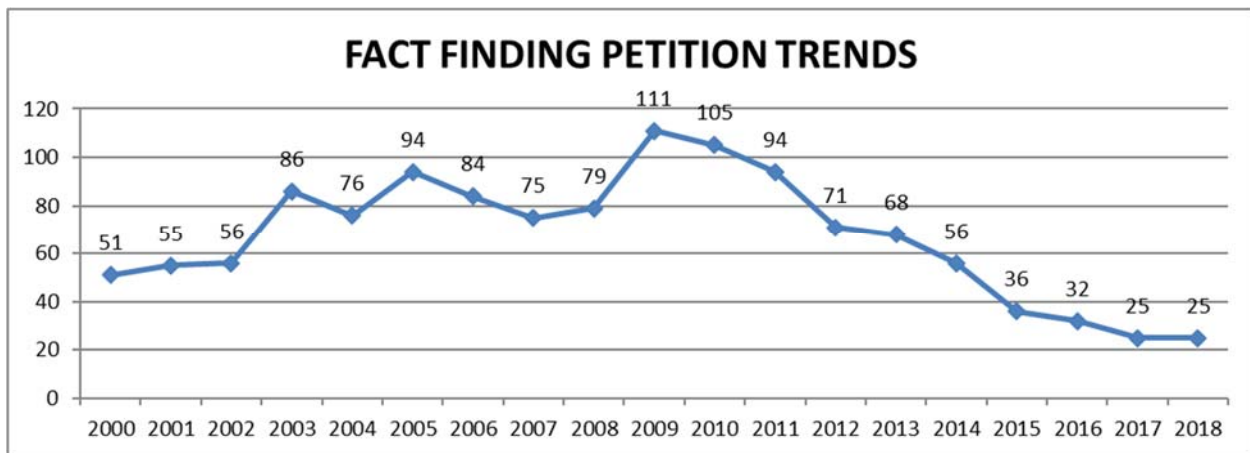
FACT FINDING AND ACT 312 ARBITRATION TRENDS

Petitions filed to initiate Act 312 Arbitration have shown a steady decline over the past decade. The 2011 amendments to Act 312 streamlined and expedited the process and made significant changes in procedure, such as requiring that final offers on economic issues be presented at the beginning of the hearing rather than at the end. Also included in the Act 312 administrative rules was a specific provision requiring mediation as a prerequisite to filing a petition for Act 312

Arbitration. Prior to the amendment, petitions for Act 312 Arbitration were routinely filed before contacting the mediator, and the mediator had limited time to attempt to schedule a mediation conference. Mediation involvement has had a significant impact on the number of settlements reached without the time and expense to the parties of engaging in an Act 312 Arbitration proceeding.

Petitions to initiate Fact Finding have also been dramatically reduced during the same period. The impact of 2011 PA 54, as explained previously, and the subsequent request for earlier mediation of labor disputes, combine to make early mediation a critical and highly effective part of the collective bargaining process. This is especially so in difficult labor disputes that may be settled without the need for a potentially lengthy Fact Finding process.

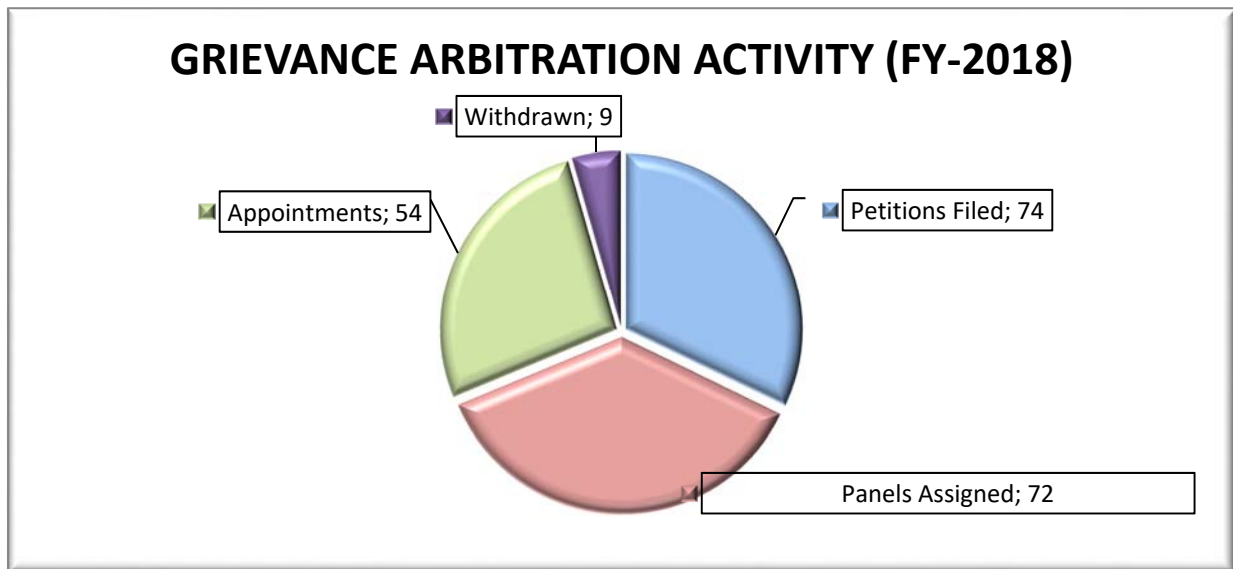
The charts below reflect the clear trend that the parties who, with mediation assistance, are able to reach settlement of contract negotiations without the need to proceed with Fact Finding or Act 312 Arbitration.



GRIEVANCE ARBITRATION

Pursuant to its authority to aid in resolving labor disputes, MERC assists parties in selecting a skilled arbitrator to perform grievance arbitration in the field of labor relations. Parties may utilize this service subject to the terms of their labor contract or by mutual written agreement. MERC's involvement is limited to assisting in the appointment of a grievance arbitrator. While there is no charge for MERC's role in the process, the daily rate set by the arbitrator is paid by the parties, along with any other costs associated with the arbitration process. MERC does not enforce or vacate awards and will not collect fees.

Grievance Arbitration activity utilizing MERC services during FY 2018 was:



UNION AUDITS

In 2014, the Michigan Legislature amended PERA to require that labor organizations representing public sector employees in the state provide an independent audit to MERC. PERA Section 423.210(9) specifically provides:

Sec. 10 (9) By July 1 of each year, each exclusive bargaining representative that represents public employees in this state shall have an independent examiner verify the exclusive bargaining representative's calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year and shall file that verification with the commission. The commission shall make the exclusive bargaining representative's calculations available to the public on the commission's website. The exclusive bargaining representative shall also file a declaration identifying the local bargaining units that are represented. Local bargaining units identified in the declaration filed by the exclusive bargaining representative are not required to file a separate calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment.

Registration forms and Independent Audits must be submitted to MERC in pdf format via email to www.unionaudits@michigan.gov, using an agency coversheet and the assigned identifying number.

During FY 2018, the Commission received 495 union audits. The posted audits and information for registering to file an audit are available on the Commission's website.

FY 2018 TRAINING AND EDUCATION

MERC BASICS

MERC/BER first presented a well-received *MERC Basics* training program on August 20, 2014 in Troy, Michigan, co-sponsored by the Metropolitan Detroit Bureau of School Studies. The program focused on the basics of labor relations in public sector collective bargaining in Michigan and the services available through BER. The training session was created in response to a request from a constituent advisory committee, based upon the observations that a large number of recently-appointed labor relations managers and union representatives might benefit from a greater understanding of MERC/BER programs and processes. The *MERC Basics* training program was developed by BER staff, and the kick-off presentation was presented by Commission Chair Edward Callaghan, Mediator Sidney McBride and Mediation Supervisor James Spalding.

The great success of this initial offering of the *MERC Basics* training program prompted the Bureau to offer this training opportunity in other parts of the State, as well, and it has been presented in several locations each year since 2014.

The MERC Basics presentation continues to be a popular and sought after training program that consistently receives highly positive reviews from the attendees, who come away with a significantly increased understanding of MERC and BER programs, policies and procedures. The BER Mediation Division was requested to present two sessions of the MERC Basics program at the Great Lakes Water Authority on October 12, 2017. A morning session and an afternoon session were structured to allow the training to be provided to a large number of attendees.

Currently creation of a revised and expanded MERC "Basics and Beyond" PowerPoint presentation is nearing completion to provide a more comprehensive training program for seasoned labor relations professionals, in addition to those just beginning their career in the field.

TRAINING PRESENTATIONS

Education and training are important components of the mission of MERC/BER. BER staff regularly respond to requests from constituents to provide training on various topics and to serve on panels presenting to labor and management organizations.

The following training programs and presentations were conducted during FY 2017/2018:

October 12, 2017	Great Lakes Water Authority - MERC Back to Basics
October 20, 2017	MERC Act 312 Arbitrator and Fact Finder Training
November 15, 2017	Wayne State University Labor Studies Class-- Presentation on “Public Sector Labor Mediation—Who, What, When, Where and WHY”
December 14, 2017	Third Circuit Court & AFSCME Council 25 locals - MERC Back to Basics
April 18, 2018	Detroit Metropolitan Chapter of the American Society for Public Administration on Right to Work Law in Michigan: <i>Assessing the Outcomes</i> Presentation on the topic of Court and Agency Interpretations of Michigan’s Right-to-Work Statute, 2012 PA 349
April 19, 2018	The 43rd Annual Labor & Employment Law Institute of the Institute of Continuing Legal Education, reviewing MERC cases decided by the Commission and Michigan Appellate Courts in the previous year.
September 12, 2018	Michigan Public Employer Labor Relations Association presenting a MERC Case Update at the 2018 Annual Training Conference

LABOR-MANAGEMENT COOPERATIVE ACTIVITIES

Collaborative Bargaining

Many employers and labor organizations believe that a cooperative approach to collective bargaining is more effective than the traditional, adversarial approach. In addition to traditional mediation, the Commission has adopted a collaborative approach to collective bargaining, referred to as the “Collaborate to Contract” process. The collaborative approach is intended to avoid a situation in which one party wins only if the other loses. The process focuses on open and frank discussions, free exchange of information, an examination of issues, interests, and mutual concerns, and the use of agreed-upon standards to judge options. The ultimate goal is to improve the overall bargaining relationship, while the more immediate goal is to resolve the particular contract dispute at issue. In most cases, bargaining teams are jointly trained in the process. Following training by a MERC mediator, the mediator may be scheduled to assist during the initial collaborative bargaining sessions as a resource person, while parties become comfortable with utilization and facilitation of the collaborative bargaining process. During FY 2018, there was an increase in collaborative bargaining training activity over recent years. Training in collaborative bargaining was conducted in the following locations in FY 2018:

- Tri County Schools in Sand Lake.
- Zeeland Public Schools

- Holland Public Schools
- Kellogg Community College, Battle Creek
- East Lansing Public Schools

Interest Based Problem Solving

A variation on the Interest Based Bargaining training is a recently developed training program on Interest Based Problem Solving. This program is typically presented along with training in the establishment of a labor-management committee to improve the quality of communication and enhance the process of resolving workplace issues.

The Mediation Division provided training on setting up an effective labor-management committee, and utilization of an interest based problem solving model, during FY 2018 at the City of St. Clair Shores with the Michigan Association of Police. The training was also provided to the Michigan Department of Health and Human Services as detailed below in the Interagency Cooperation section of the Annual Report. This type of training is expected to grow in popularity.

Labor-Management Committees

The Mediation Division worked with the following labor-management committees, comprised of labor and management representatives, with the goal of assisting in facilitating positive relations between labor and management groups:

- The **Michigan Labor Management Association (MLMA)** provides periodic labor relations seminars and hosts a popular annual golf outing that brings labor and management teams together in a welcoming recreational activity. Bureau staff actively participate on the advisory board of MLMA and in the Association's programs, providing logistical support and serving as expert presenters on topics of interest to the labor relations community. During FY 2018, BER staff presented at a labor-management conference in Lansing, Michigan, hosted by MLMA.
- The **Kalamazoo Area Labor-Management Committee (KALM)** sponsors a regular luncheon meeting (usually monthly) with presenters on current labor relations topics. In addition, the KALM hosts an annual dinner program to recognize labor and management negotiation teams that have successfully reached settlement of a collective bargaining agreement in the prior year.
- The **Muskegon Area Labor-Management Committee (MALMC)** sponsors an annual labor-management conference. In addition, MALMC annually hosts an innovative student collective bargaining program, during which union and management labor relations professionals work as advisors to high school students and guide them through a mock collective bargaining exercise. BER mediators attended the program and provided mediation expertise to the participants.

- The **Upper Peninsula Labor-Management Council (UPLMC)** provides an annual conference to several hundred attendees across the Upper Peninsula focusing on relevant and timely topics. The Council also sponsors student collective bargaining exercises for high school seniors.

Interagency Cooperation

MERC and BER are strong advocates for interagency cooperation and work closely with other state agencies as we strive to meet our goals and, ultimately, benefit the citizens of the State of Michigan. MERC and BER have established ongoing productive relationships with the following:

- Michigan Department of Education

The Michigan Department of Education, State Aid and School Finance Section, coordinates regularly with BER in an ongoing effort to share information on public schools in deficit or facing financial distress. That information provides a significant level of understanding of the financial status of public school districts and the potential impact of respective budgets on the collective bargaining process. When MDE has identified a school district facing potential financial distress, they contact the Mediation Division for early intervention and assistance mediating discussions centered on resolving the economic threat.

In addition to promptly sharing quarterly reports with MERC relative to deficit districts, a representative from the Michigan Department of Education participated on a panel of presenters at the MERC Act 312 Arbitrator and Fact Finder training program during FY 2018, providing MERC panel members with an enhanced understanding of complex public school financial reports and public school funding.

- Michigan Department of Treasury

The Michigan Department of Treasury, like the Michigan Department of Education, regularly participates on the panel of presenters at the MERC Act 312 Arbitrator and Fact Finder training program, as they did during FY 2018. At that program, Treasury provided the MERC panel of arbitrators and fact finders with an enhanced understanding of municipal financial reports and sources of funding for local units of government. This information and understanding is critical for Act 312 arbitrators and for Fact Finders, who are charged with issuing a binding award for public safety union contract disputes and a recommendation in a Fact Finding case.

- Library of Michigan

The Library of Michigan, in cooperation with MERC and BER, has made significant progress in ensuring that MERC Decisions are readily available to the public through its Governing Michigan website. The Library has scanned MERC Decisions dating back to the first Decision, dated August 16, 1965, and completed this undertaking during FY 2018, with all MERC Decisions available on its website.

- Michigan Department of Health and Human Services

The BER Mediation Division responded to a request to assist DHHS and UAW 6000, which were seeking to implement negotiated language establishing a labor-management committee. They were also seeking training on a non-adversarial interest-based problem solving model. Training for their state-wide labor-management committee was held on January 11, 2018. Due to the strong, positive response to the training, additional regional training programs were scheduled across the state throughout the fiscal year. The labor-management committee is intended to facilitate productive and harmonious relationships in the DHHS workplace.

MERC/BER labor mediators provided training for DHHS and UAW 6000 on how to set up a labor-management committee and utilize the interest-based problem solving model in the following counties during FY 2018:

- Cheboygan County
- Marquette County
- Kalamazoo County, (2 events)
- Muskegon County
- Kent County
- Bay County
- Macomb County
- Monroe County
- Oakland County

Additional locations continue to seek this popular training, and the Mediation Division will continue to provide this service consistent with the availability of mediation staff. Beyond DHHS and UAW 6000, the training program is also available upon request for agencies within BER's parent Department of Licensing and Regulatory Affairs (LARA).

MERC-NLRB Joint Program

As a further indication of the collaboration between the National Labor Relations Board and MERC, the agencies conducted a joint presentation highlighting the similarities and differences between them and their processes and procedures. The presentation, entitled "NLRB and MERC – Similarities and Distinctions – Working in Tandem to Promote Peace in Public/Private Sector Labor Relations," took place at the Bernard Gottfried Memorial Labor Law Symposium on October 19, 2017, at Wayne State University Law School.

OTHER FY 2018 HIGHLIGHTS

BUDGET

The authorized and available appropriations for the Bureau of Employment Relations during the 2018 fiscal year was \$4,236,100. The Bureau is funded exclusively from State Restricted funds.

DASHBOARDS (SCORECARD PERFORMANCE SUMMARY)

In 2011, Gov. Rick Snyder established the Michigan Dashboard to measure progress in meeting key objectives and to serve as a catalyst for positive change in State government. The three key metrics identified by BER were: Issuance of Orders within 8 Months of Record Close; Consent Elections conducted within 65 Days of Filing Petition; and Mediate Labor Contract Disputes Closed without Proceeding to Grievance Arbitration. The following chart represents the overall average of BER's Dashboard performance during the 12 months in FY 2018.

MiScorecard Performance							
Agency: Employment Relations				Legend:			
Director Ruthanne Okun				Green		90% or greater of target	
Period: FY 2018				Yellow		>=75% to <90% of target	
SCORECARD				Red		less than 75% of target	
				White		not applicable	
Metric	Status	Trend	Target	Current	Previous	Frequency	Metric Definition
Employment Relations							
Issuance of Orders		↑	90%	98.2%	97.8%	Annual	Percent Issued within 8 Months of Record Close
				56 of 57	92 of 94		
Conduct Consent Elections		↑	80%	92.1%	88.8%	Annual	Percent Held within 65 Days of Filing Petition
				70 of 76	72 of 81		
Mediate Labor Contract Disputes		↑	80%	93.2%	88.3%	Annual	Contract Disputes Closed w/o Proceeding to Grievance Arbitration
				207 of 222	152 of 168		

PRIORITIES

In the Fall of 2017, at the request of persons in the Governor's office who are seeking solutions via the effort to Reinvent Performance Michigan (RPM), we were asked to provide various bureau-wide priorities. In response, BER established its own RPM Process Review and set forth the following RPM Projects to accomplish during the fiscal year.

1. Fully integrate Wage and Hour into the Bureau of Employment Relations, while protecting and retaining the separate missions of both agencies.
2. Conduct an (internal) legal review of Wage and Hour policies and procedures followed by a review by RPM.
3. Complete the Bureau of Employment Relations case tracking modernization project.

Progress, if not completion, has been accomplished on all 3 priorities.

1. Wage and Hour has been fully integrated into the Bureau, while both agencies are highly respectful of each other's mission – recognizing that each is very different than the other.
2. The internal legal review of Wage and Hour policies and procedures has been completed, while staff at the highest level are working at Wage and Hour to continue the review of Michigan's Wage and Fringe Benefit Act – the bulk of the agency's work. Staff review of Act 166 (Prevailing Wage) and the prevailing Wage revisions took place and were implemented. (When the prevailing wage law was repealed, Wage and Hour Division acted promptly to ensure that information contained on the web concerning prevailing wage and other written material properly notified affected constituents of the legislative action. Applicable FAQs were quickly developed to inform constituents of the law's repeal).
3. Lastly, the Bureau's case tracking modernization project is well on its way to completion. The contract is on-going with a more than competent vendor and the construction of the system is projected to be completed in the Fall of 2018 with a Go-Live date set for December 2018. Post go live activities will occur through the beginning months of 2019 and thereafter, if needed.

RULE AMENDMENTS

The Bureau is in the process of completing modernization of its case tracking system and anticipates that the Commission will mandate the use of electronic filing in the some or all its processes. This will require the modification of Rule 181(1) of MERC's General Rules, which sets forth the manner by which parties may file various case related documents. With the anticipated change to Rule 181(1), other rules which contain language requiring the filing of an original and two or more copies would also require minor modifications to indicate that the filing of additional copies is not necessary if filing is made electronically.

EMPLOYEE ENGAGEMENT

In the past several years, employees in the Bureau of Employment Relations have completed the Employee Engagement Survey conducted by Price Waterhouse Cooper (PWC), which is administered to all State of Michigan employees. Employee engagement is defined as the strong and positive connection between a person and his or her job.

The Survey is an important part of Governor Snyder's reinvention of state government and was designed to "help ensure a customer-focused government and a work culture in which employees

are highly engaged, respected, and valued; and have the opportunity to express and explore views on issues related to their jobs.” Governor Snyder recognizes that employee engagement inspires significant outcomes of real value because when employees are truly engaged, the State of Michigan reaches its full potential.

In 2017, the Bureau of Employment Relations had an employee engagement score of 96%, a 4% increase from the 2016 Survey. Additionally, the Bureau had one of the highest number of employee engagement champions - those employees who have a high level of engagement and a high likelihood of remaining with the State of Michigan, of all agencies in its parent department, the Department of Licensing & Regulatory Affairs.

Even with these remarkable scores, the Bureau submitted an Action Plan in an effort to achieve even better scores when the survey was administered in September, 2018, and, also, because it is vital to have engaged employees and to respond to their concerns. Targeted in the Bureau’s Employee Engagement Action Plan for 2017 were the following: (1) sufficient effort is made to obtain opinions, (2) meaningful action has been taken since the last survey, and (3) department leadership is creating a culture of continuous improvement.

The Bureau continues to work on the above action items to promote a more inclusive work environment in which employee engagement is fostered and encouraged.

MERC ACCOMPLISHMENTS

Several significant accomplishments were achieved during FY 2018:

- **Commission Docket Disposition**

The Michigan Employment Relations Commission’s (MERC) docket is current and up to date with pending cases and decisions.

- **Grievance Mediation Promotional Plan**

In FY 2018, BER/MERC continued in its mission to provide education and training, via presentation of the MERC Basics PowerPoint program in Detroit at the Great Lakes Water Authority; in Houghton at Michigan Technological University, and in Troy for the Metropolitan Detroit Bureau of School Studies. Also, the MERC Basics PowerPoint program was presented at an event at which approximately 75 management and labor representatives from AFSCME Council 25 and four public sector employers in Detroit were in attendance, including: City of Detroit (including the Police and Fire Departments), 3rd Circuit Court, Great Lakes Water Authority and Detroit Water and Sewer Department. The PowerPoint slides from the MERC Basics Program are also available to the public on the agency’s website.

Additionally, Bureau personnel participated in presentations designed to inform constituents about updates and changes to the laws administered by the Commission in Plymouth, at the Institute of Continuing Legal Education’s Annual Labor and Employment Law Institute; and in Lansing, at the Michigan Labor-Management Association’s spring conference. The Commission also conducted a training for its arbitrators and fact finders in East Lansing. That training provided the arbitrators and fact finders with information

regarding recent cases and statutes affecting Act 312 and Fact Finding cases, information regarding municipal and school financing, and training on handling difficult issues in Act 312 and Fact Finding proceedings. Materials from these presentations are posted on the BER/MERC website and a link to a video recording of the program has been made available to Act 312 Arbitrators and Fact Finders.

Mediators offered training on mediation and interest-based bargaining for City of Mt. Pleasant, City of Springfield, Wayne State University Labor Studies Program, Muskegon Area High Schools, Grand Rapids Community College, St. Louis Public Schools, Grand Rapids Area Mental Health Services, Holland Public Schools, Zeeland Public Schools, Sand Lake Public Schools, and the Michigan Department of Health and Human Services.

Bureau staff also provided outreach and collective bargaining training exercises to a labor law class at Grand Valley State University and to a student collective bargaining program hosted by the Muskegon Area Labor/Management Committee.

Internal training was also a priority in 2018, with a first ever joint training program opportunity held along-side the MERC and Wage and Hour division of the Bureau, laying a foundation for successive Bureau wide training in the following calendar year.

- **Succession Planning Update**

Due to the highly specialized nature of work performed by BER staff, combined with a large proportion of staff eligible for retirement, succession planning is of vital interest to the Commission. Succession planning was initiated in 2010, and the written Succession Plan has been updated periodically as the need arises. The most recent update was approved by the Commission in February, 2018.

The purpose of the BER Succession Plan is to ensure a smooth transition as the agency responds to planned vacancies due to retirements and extended absences. In addition to identifying positions likely to be vacant in the near future and the process anticipated to be followed in filling the vacancy, the Succession Plan outlines how work may be redistributed while a position remains unfilled, whether the vacancy is anticipated or not.

Through the creation of a thoughtful and more comprehensive BER Succession Plan, the agency is poised to continue to move forward seamlessly under any circumstances while continuing to meet its goals and mission without interruption.

- Provided education and training to various constituent groups, including:
 - Act 312 Arbitrator and Fact Finder training at Michigan State University
 - MERC Basics PowerPoint at several locales
 - Interest Based Bargaining training at numerous locations/venues
 - Bernard Gottfried Memorial Labor Law Symposium at Wayne State University
 - Institute of Continuing Legal Education – Labor and Employment Law Section event
 - Michigan Labor-Management Association conference

- Amended General Rules to reflect changes in the law as a result of 2016 PA 194 (Public school strikes and lockouts).
- Promoted grievance mediation resulting in a significant increase in constituent requests for this mediation service.
- Published and disseminated MERC's 5th Annual Report.
- Promoted positive and effective labor/management relationships by offering dispute resolution vehicles as an alternative to a work stoppage or disruption.
- Worked diligently to ensure that the MERC docket is current and up to date.

2018 Goals

- Finalize update and modernize the BER/MERC case tracking system with a Salesforce platform, replacing the outdated ORACLE system.
- Continue to integrate the Wage and Hour Division into the Bureau, with a joint training program and long-term strategic planning of process improvements.
- Continue to expand education and outreach activities, including:
 - Promotion of effective labor-management relations activities for constituents and other State agencies, via establishing labor-management committees and providing training in interest-based problem solving and bargaining skills.
 - Continue to update and present MERC Basics and MERC Beyond the Basics training to constituents.

• MICHIGAN HOSPITALS

FY 2018 proved to be an active year for difficult negotiations in both public and private sector Michigan hospitals, with nurses and other health care workers threatening to strike in several locations. MERC/BER mediation staff played a crucial role in working to resolve labor disputes in hospitals which had the potential to severely impact critical health care services utilized by a vast number of patients. The following are examples of notable FY 2018 hospital labor disputes demonstrating the importance of effective labor mediation services to the health, welfare, comfort and safety of the people of the State, and to those who travel to the State to obtain health care services.

Hurley Medical Center and the Hurley Nurses and Pharmacists Assn. - Numerous mediation sessions were held with the parties, and a fact finding hearing was conducted by a neutral fact finder appointed through the MERC processes. Hearings were conducted, and a report and recommendation for settlement was issued. The union filed a lengthy unfair labor practice charge alleging bad faith bargaining, and in October, a MAHS ALJ issued a Decision and Recommended Order finding that the Employer had breached its duty to bargain. Exceptions were filed for Commission review and a decision, which was pending at the close of FY 2018, but scheduled to be issued shortly thereafter. Additional unfair labor practice charges concerning these parties remained at MAHS, with hearing dates scheduled. In the meantime, following the fact finder's report, the parties returned to mediation and held several sessions, during which a contract settlement was reached.

Unfair Labor Practice Charges still remain before the Commission for a decision to be issued.

University of Michigan Hospital and Michigan Nurses Association (MNA) – The contract between the hospital and the union, representing over 5,000 nurses, expired on June 30, 2018. The parties engaged in extensive negotiations and held numerous mediation sessions with a MERC/BER mediator. A petition for fact finding was submitted by the union. During the course of negotiations, the union engaged in informational picketing and the nurses voted to authorize a strike. The press reported on a federal lawsuit that the union had filed against the University alleging a violation of first amendment rights. The union also filed unfair labor practice charges against the University. During all of this activity, the mediator continued to hold exhaustive mediation sessions and, late on an evening in early October, assisted in resolving the dispute with a contract settlement, that included withdrawal of the Unfair Labor Practice Charges.

McLaren Macomb Hospital and Michigan Nurses Association (MNA) – The contract between the hospital and the union, representing hundreds of nurses, expired on June 30, 2018. The parties engaged in negotiations and held several mediation sessions with a MERC/BER mediator. A petition for fact finding was submitted by the union. The union also engaged in informational picketing, and the nurses voted to authorize a strike. Several unfair labor practice charges were filed by the union. Following the strike authorization vote by the nurses, an intense schedule of mediation dates were set through the end of August. After negotiations and mediation that lasted throughout the night, on August 30, 2018, the mediator assisted the parties in reaching a contract settlement, ending the dispute.

MERC WEBSITE & RESOURCE MATERIALS

The following materials and information are among some of the information available on the MERC website:

- MERC Homepage
- MERC and Court Decisions Affecting Act 312 and Fact Finding
- MERC Case Decisions
- MERC Decisions Pending before the Michigan Court of Appeals
- MERC Decisions Pending before the Michigan Supreme Court
- MERC Elections Certifications
- MERC Annual Reports
- MERC Forms
- MERC Guide, Rules, Policies and Statutes
- Chart of Recent Significant Legislative Changes Impacting Collective Bargaining
- MERC Panel Members (Act 312 Arbitrators, Fact Finders and Grievance Arbitrators)
- Union Audit Filings
- BER Offices

- “What's New” - provides new and significant information, including recent key rulings by MERC
- Freedom to Work Information with Frequently Asked Questions
- LARA FOIA Requests

Commission Decision Accessibility

The Bureau of Employment Relations has diligently sought to improve the ease with which Commission decisions may be searched. Constituents have the ability to conduct case searches by year and month by clicking on the “1998-present MERC Commission Decisions Issued” link on the “MERC Decisions” page at www.michigan.gov/merc.

Additionally, the search bar is fully operational on the “MERC Decisions” page and utilizes the newest google search technology. Here, constituents are able to type in case numbers, party names, search terms, etc. to locate a specific case(s). Also, if an exact term is queried in “quotes,” in addition to the documents that contain that phrase, a search box populates additional phrases or terms that may correlate with the topic being searched. We trust that this feature will prove very useful for our constituents, especially those who may be unfamiliar with the work performed by MERC/BER.

MERC decisions from 1965-2015 are also available on the Governing Michigan web site, accessed via a link on the “MERC Decisions” webpage, compliments of the Library of Michigan.

MERC/BER CONTACT INFORMATION

Should you need additional information regarding the Commission or Bureau, contact:

<p>Cadillac Place (Detroit) 3026 West Grand Blvd, Ste. 2-750 P.O. Box 02988 Detroit MI 48202-2988 313-456-3510 313-456-3511 (fax)</p>	<p>Ottawa Bldg. (Lansing) 611 W. Ottawa, 4th Floor P.O. Box 30015 Lansing MI 48909 517-373-3580 517-335-9181 (fax)</p>
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