

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FISCAL YEAR 2013 ANNUAL REPORT
(October 1, 2012 thru September 30, 2013)



Prepared by Bureau of Employment Relations Staff

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I. INTRODUCTION

A. MESSAGE FROM THE COMMISSION CHAIR

Welcome to the 2013 Annual Report of the Michigan Employment Relations Commission covering the fiscal period from October 1, 2012 through September 30, 2013.

This report is divided into five (5) sections. Please read each section to fully appreciate the hard work of the Commission and the entire staff of the Bureau of the Employment Relations (BER). The 2013 Fiscal Year was filled with change, growth, and opportunity for the Commission as it sought to administer various laws governing labor-management relations in the State of Michigan. The Commission and Bureau staff were extremely busy with various accomplishments outlined throughout this report.

Under the capable leadership of Bureau Director Ruthanne Okun, we provided training to staff, constituents, and Act 312 Arbitrators and Fact Finders to ensure their preparedness to competently handle matters in accordance with our agency's statutory mandates. Staff in our two divisions diligently worked to assist the Commission to resolve labor-management disputes involving contract negotiations and grievances, unfair labor practices, and representation and unit clarification matters during this challenging economic time. Successes in these areas prevented stoppages in workplaces throughout our State, and reduced the number of unfair labor practice charges and other disputes filed with MERC. We also implemented processes to assist constituents seeking to adhere to recently enacted laws such as Freedom to Work and the audit filing requirement for labor organizations that represent public sector employees under PERA.

As FY 2014 commences, we are encouraged by the continued efforts of employers and employees, labor organizations, and all others committed to deliver the highest quality goods and services in the public and private employment sectors throughout this state. This outcome is possible through the hard work, cooperation and mutual respect of the labor-management community overall. We also appreciate the continued recognition by Governor Snyder and the Michigan Legislature of the vital role that collective bargaining plays to stabilize labor-management relationships in public and private sector employment and to ensure the uninterrupted delivery of quality goods and services. As new challenges develop, we will approach them with renewed enthusiasm and the expectation that our efforts will promote productive relations in the workplace.

The Michigan Employment Relations Commission hopes that you find this 2013 Annual Report informative and user friendly. Visit our website at www.michigan.gov/merc for further information and updates.

Respectfully submitted,

Edward D. Callaghan, Chair
Michigan Employment Relations Commission

B. COMMISSION MEMBERS

Dr. Edward D. Callaghan was appointed as Chair of the Michigan Employment Relations Commission on June 20, 2011. He has been a full-time faculty member at Oakland Community College (OCC) since 2005. He previously served as President of OCC's Orchard Ridge campus and as the College's 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 MERC.

Commissioner Callaghan has a bachelor's degree from the University of Detroit, an MBA from Wayne State University and a Ph.D. from the University of Michigan. His 3-year term expires June 30, 2014.

Robert S. LaBrant was appointed to the Commission on July 1, 2012. He previously served as Senior Vice President and General Counsel at the Michigan Chamber of Commerce, from where he retired after nearly 35 years. Commissioner LaBrant came to the Michigan Chamber from the Business-Industry Political Action Committee in Washington, D.C. He also worked for the Appleton, Wisconsin Area Chamber of Commerce, the Metropolitan Milwaukee Association of Commerce and served on the staff of Congressman Harold V. Froehlich of Wisconsin. He was a Captain in the U.S. Army with service in Viet Nam.

Commissioner LaBrant holds a Juris Doctorate (Cum Laude) from the Thomas M. Cooley Law School in Lansing, Michigan. He has served as an adjunct faculty member at Lansing Community College and the Cooley Law School. Commissioner LaBrant's appointment expires June 30, 2015.

Natalie Priest Yaw was appointed to the Commission in June of 2013. She has years of experience working with businesses and associations. Commissioner Yaw is vice president and legal counsel for RBS Citizens, N.A. in Southfield, where she represents Citizens Financial Group and RBS Citizens on legal issues concerning claims regarding lender liability from commercial loans, retail banking customers, and consumer lending. She previously worked at the Dickinson Wright law firm in Detroit where she managed complex litigation. Commissioner Yaw is a member of the State Bar of Michigan, the Detroit Metropolitan Bar Association, Wayne County Chapter of the Women Lawyers Association of Michigan, and the Federal Bar Association, Eastern District of Michigan.

Commissioner Yaw has a bachelor's degree from Rice University and Jurist Doctorate (Summa Cum Laude) from Michigan State University College of Law. Her term expires June 30, 2016.

Honorable Mention: Former MERC Commissioner Nino Green served from July, 2004 until his retirement in June, 2013. His invaluable participation will always be appreciated.

C. 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 (PERA) and the 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 some municipal police and fire department employees (Act 312 of 1969) as well as to state police troopers and sergeants (Act 17 of 1980).

D. BUREAU OF EMPLOYMENT RELATIONS

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

Staff Biographies

Ruthanne Okun, BER Director has been in the field of labor and employment relations for the past 33 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 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 at MERC and supervises staff located in Detroit, Lansing, and out-state areas. She also serves as legal advisor to the Commission. Director Okun is a member of the State Bars of Michigan and Illinois.

Travis Calderwood joined the Bureau of Employment Relations as an Administrative Law Specialist 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. Travis 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. Travis is a member of the State Bar of Michigan.

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 his BER appointment, Jim held positions in the public and private sectors 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. Jim serves on the Board of Directors of the Michigan Labor-Management Association and served on the Alumni Board of Directors as a past president of the MSU School of Labor and Industrial Relations.

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 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 Teamster, 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. He obtained 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 State of Michigan, 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.

Milli Kennedy has worked for the State of Michigan for 40 years exclusively within the Department of Labor under its various names. Ms. Kennedy has received several promotions and worked at four different levels within the Civil Service System. She is currently the Mediation Secretary in Lansing. Before working the State, Ms. Kennedy worked in the private sector for 12 years.

Tom Kreis joined the mediation staff of the Bureau of Employment Relations in 2004 and currently works out of Alpena as the mediator assigned to the geographic area of the Northern Lower Peninsula. Prior to becoming a mediator, Tom had been on the Alpena Police Department from 1975 to 1989 when he assumed the position as a full time Staff Representative for the Police Officers Labor Council representing over 45 Police, Sheriff and Public Safety Departments in all matters of labor relations, including: Act 312 hearings, grievance arbitration, negotiations and unfair labor practices.

Tracy Marr returned to State service in 2008 as a Legal Secretary for three MAHS Administrative Law Judges. In January, 2013 she also began working in the Bureau of Employment Relations as Elections Secretary. Previously she worked for private practice attorneys handling small claims, bankruptcy, collections and probate court cases. While working for the State from 1997-2004 she worked in Corrections as a medical secretary, legal secretary

and bookkeeper/supervisor. During her leave from State employment, she worked with her husband in their construction business handling bookkeeping, bidding and related duties.

Wanda Mayes is a Labor Mediator working for the past 12½ years at the Bureau of Employment Relations in Detroit. Wanda mediates labor disputes in the public and private sector, mediates EEOC and Civil Rights complaints, establishes Labor-management Committees and facilitates contracts negotiated using Interest Based Bargaining techniques. Wanda has a Bachelor of Science in Business Administration (1985) and a Master of Arts in Industrial Relations (1998), both from Wayne State University. She is currently attending Wayne State University Law School. She began her career in Labor Relations in 1988 with the City of Detroit's Labor Relations Division.

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, member of the Labor and Employment Law Section. He graduated from Wayne State Law School in the top third of his class.

Verna Miller Departmental Specialist/Elections Officer began working for Bureau of Employment Relations in October of 2012. Her State employment career began with the Unemployment Insurance Agency in 1987 where she worked as an UI Analyst. In 2000, she began working for the Michigan Department of Transportation as their Title VI Civil Rights Specialist. Prior to coming to the Bureau, she worked for the Michigan Administrative Hearing System as an Administrative Law Judge, adjudicating matters related to unemployment insurance benefits. She attended the University of Detroit Mercy where she was recipient of a full academic scholarship and graduated *magna cum laude* with a B.A. degree in Legal Administration. She attended the Michigan State University School of Law where she was recipient of the Trustee Academic Scholarship (full tuition award), receiving a Juris Doctorate degree in 1997. She is a member of the State Bar of Michigan.

D. Lynn Morison is Staff Attorney for the Bureau of Employment Relations, having previously worked for the Bureau as an administrative law judge. Before joining the Bureau, 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 member of the Labor and Employment Law Section of the State Bar of Michigan. She is also a member of the State and Local Government Bargaining and Employment Committee of the ABA's Section of Labor and Employment, and serves as a co-chair of its subcommittee on Practice & Procedure – Unfair Labor Practices. 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.

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 began a secretarial position with the Department of Civil Service 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 2, 2012, and a Labor Mediator since October 9, 1992. Formerly, 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 until fired by President Ronald Reagan during the 1981 PATCO air traffic controllers' strike. He was elected to the Delhi Township Park Commission in 1984, re-elected in 1988 and 199 and served as Chairperson of the Park Commission from 1989 to 1996. Mr. Spalding went to 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 (commission docket) and mediation division (Act 312 and fact finding).

Robert Strassberg has been a Labor Mediator for the past 5 years. He also headed the Bureau's Election Department for 12 years. Prior to joining the Bureau of Employment Relations, Bob has been a Personnel Director, Management Consultant, and a Labor Representative. Bob has a B.A. from Wayne State University and also attended WSU's MAIR Program (Masters Industrial Relations Program).

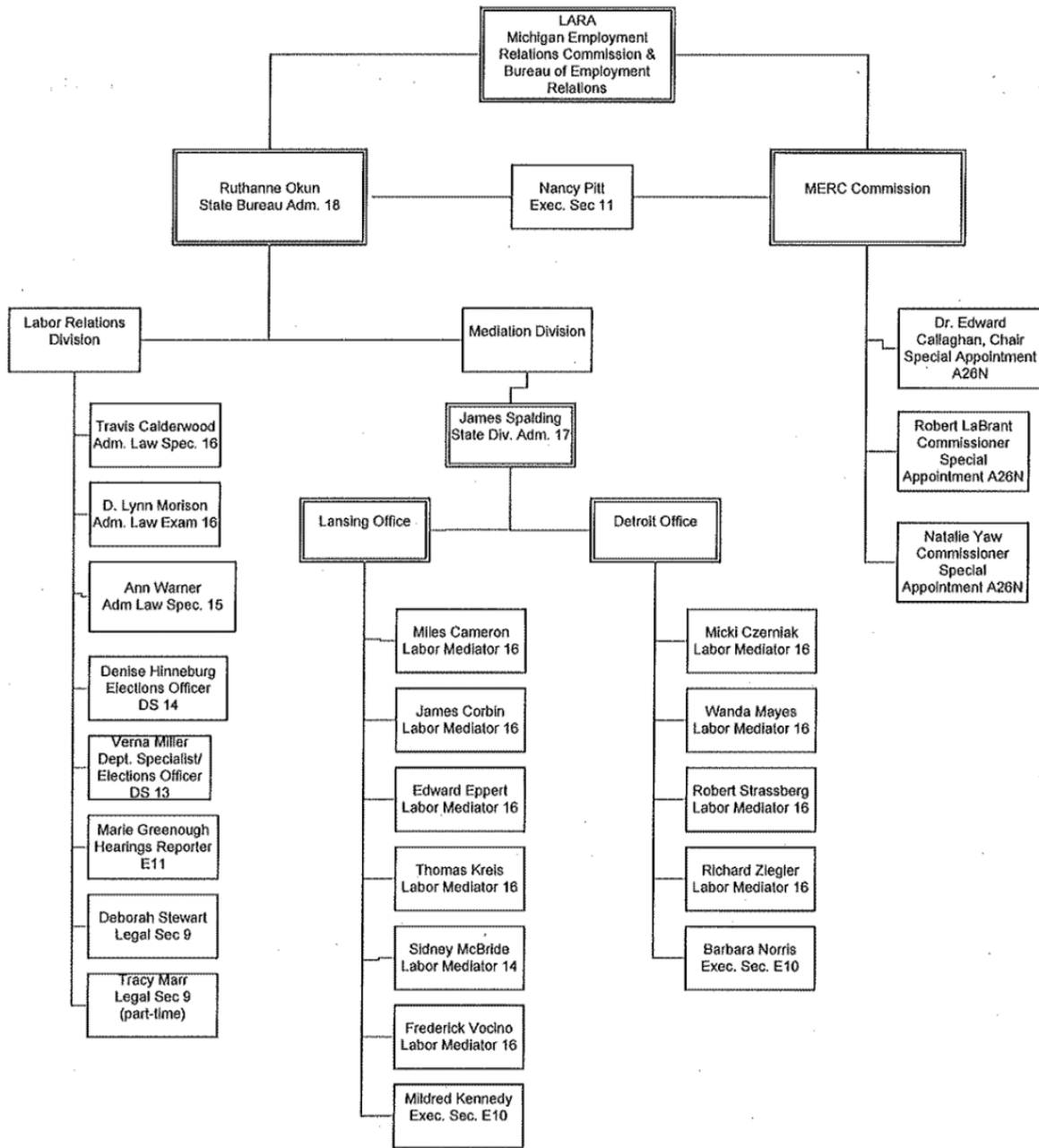
Fred Vocino has been a Labor Mediator with the Bureau of Employment Relations since October 1999. From 1991 to 1999, he was a staff position with the Michigan Nurses Association (MNA). There he conducted contract negotiations/ administration and rights arbitration, assisted with policy development and led the 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 the Grand Rapids area and covers southwest Michigan from Whitehall to Sturgis.

W. Ann Warner came to the Bureau of Employment Relations in October 2013 as an Administrative Law Specialist. Ann comes with a wealth of experience having served as a Law Clerk for the Honorable Anna Diggs Taylor of the U.S. District Court, as well as a staff attorney for the federal judges. She worked for 10 years as a Staff Attorney at the Michigan Department of Civil Rights and, most recently, as an Administrative Law Specialist for the Corporations, Securities & Commercial Licensing Bureau in LARA, handling Administrative Hearings and Settlement Conferences. Ann graduated from Wayne State University, receiving a B.A. with High Distinction and from Wayne State Law School, *cum laude* and with various academic honors. She has a plethora of organizational and civic activities on her resume and has authored an article for the Wayne State University Law Review and other publications.

Carl Wexel has been a Law Clerk with the Bureau of Employment Relations since early 2013. Prior to coming to the bureau, he was employed as Director of Labor Relations for CSX Corporation, where he handled contract negotiations and interpretation under the National Labor Relations Act and Railway Labor Act. Mr. Wexel has a B.A. from the University of Michigan, a Masters of Industrial and Labor Relations from Cornell University, and is currently a third year law student at 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.

ORGANIZATIONAL CHART



E. 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 Executive Order 2011-4, SOAHR was renamed to 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 to conduct MERC hearings related to union representation matters and unfair labor practice charges.

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 30 years. She 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 Relation 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, Mr. 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 the State Bar of Michigan's Labor & Employment Law Section.

ALJ Doyle O'Connor has heard cases on behalf of MERC since 2006 as an employee of SOAHR/ MAHS. Prior to coming to SOAHR, ALJ O'Connor represented labor organizations (public and private sector) and litigated on behalf of employees in the areas of employment termination, discrimination and personal injury. He served as a gubernatorial appointee to the Michigan Board of State Canvassers from 2003 to 2007 and was Associate General Counsel to the Michigan AFSCME Council 25 from 1980 to 1985. He received his B.A. in Labor Relations from Michigan State University (cum laude) and J.D. from Wayne State University (cum laude). (*Update: Judge O'Connor retired in October, 2013*).

II. STATUTORY OVERVIEW

A. 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, the Public Employment Relations Act (PERA) – grants all public employees within the state of Michigan, excluding classified civil service employees of the state and federal government the right to organize and be represented by labor organizations of their choice.
- 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 or 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.

B. RECENT LEGISLATIVE CHANGES AND ENACTMENTS

Since early 2011, collective bargaining in Michigan (primarily public sector) has been greatly impacted by (1) amendments to PERA, LMA and Act 312 or (2) other legislative changes that affect the Commission's administration of these 3 statutes. The scope of these legislative changes is broad and includes areas such as: expansion of the prohibited subjects of bargaining for employees subject to the teacher tenure act regarding discipline, evaluation, layoff and recall, etc. (2011 PA 100-103); limits on employer contributions to employee health care costs (2011 PA 152); restrictions on giving pay and benefit increases to employees after contract expiration (2011 PA 54); changes in the compulsory arbitration process for certain police and fire department employees (2011 PA 116); ability for public employers to consolidate or transfer services (2011 PA 258-263); union audit filing requirements (2011 PA 53); enactment of Right to Work laws (2012 PA 348 and 349) and re-defining emergency manager laws (2012 PA 436).

As a result of these new laws, the Commission began to issue decisions during FY 2013 that interpreted the changes. (Refer to the ULP section on page 16.) An updated chart of these recent legislative changes annotated with a brief description and reference to the MERC decisions issued on the new law(s) appears on the agency's website at www.michigan.gov/merc.

III. MERC PROCESSES

A. ELECTIONS

MERC Representation Proceedings

The Public Employment Relations Act (PERA) provides to all public employees in Michigan, 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 position(s) when an employer and labor organization disagree on the placement of a newly created or substantially changed classification(s). Aside from voluntarily recognition by an employer, the determination of a bargaining representative can occur by one of 3 means: 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. It is also used to accrete a 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 only when multiple labor organizations claim to be the collective bargaining representative of the same unit of employees; and **Unit Clarification (UC)**, used to determine the placement of a new or substantially changed classification established after a unit has been certified.

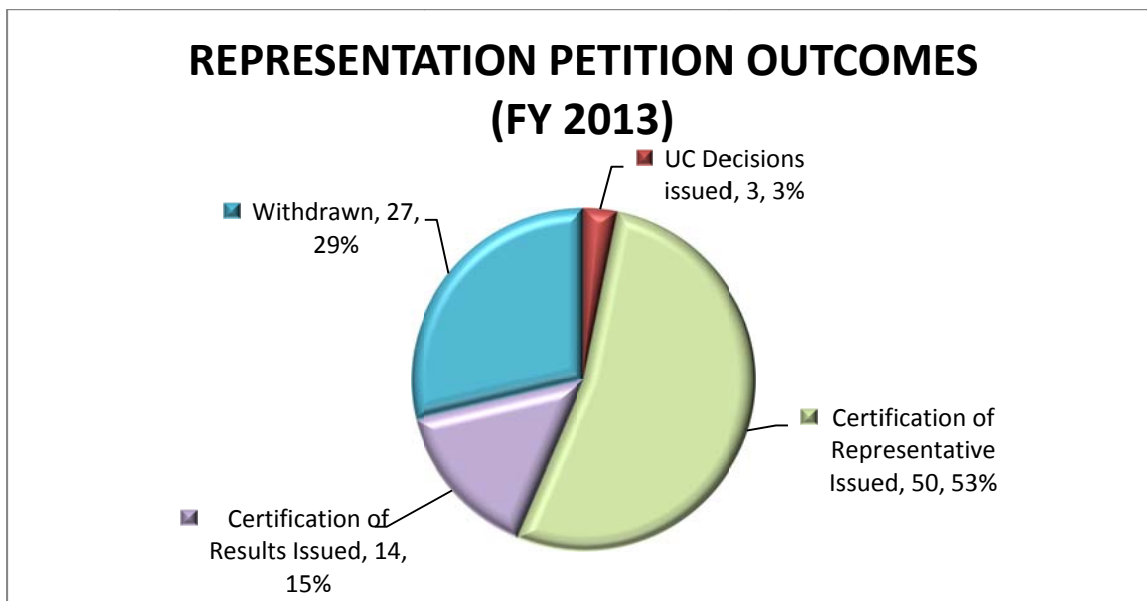
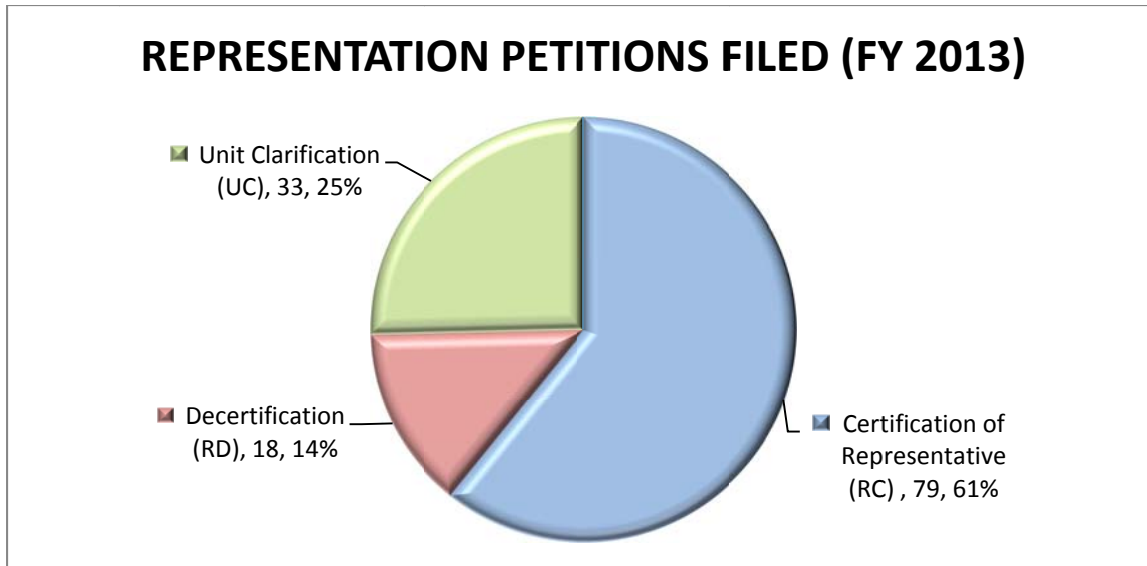
Consent Elections or Commission Directed Elections

There are two different types of elections that MERC conducts. 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 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 (excluding UC petitions), the Commission issues a **Certification of Representation** declaring that entity as the exclusive bargaining representation of the 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. With a UC petition, the Commission reviews the record and issues an order resolving the dispute over the placement of the contested classification. No balloting or election occurs with a UC petition.

During FY 2013, the following election activity occurred:



B. UNFAIR LABOR PRACTICES

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 have violated provisions 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 to the parties 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 objections (referred to as "exceptions") to the ALJ's decision, those exceptions are reviewed by the Commission. The Commission will issue its own Decision and Order that affirms the ALJ, reverses the ALJ in part or whole, or remands the matter to the ALJ for further factual findings. If exceptions are not filed, the Commission issues a final order adopting the ALJ's decision as its own.

During FY 2013, case activity routinely involved charges filed by employers, labor organizations, and individuals that dealt with alleged violations of the duty to bargain, the duty of fair representation, and the right to engage in protected concerted activity. The Commission also received several charges regarding the impact of various legislative amendments enacted since 2011. These new laws resulted in changes primarily to PERA that are discussed on page 13.

For instance, 2011 PA 54 expressly precludes public employers subject to PERA from paying wages and benefits (including step increases) at higher levels than those in effect at contract expiration until a successor agreement is ratified. In late 2012, the Commission clarified that this prohibition also applies to pay increases based on educational achievements by employees. *Waverly Cmty Sch*, 26 MPER 34 (2012) and *Bedford Pub Sch*, 26 MPER 35 (2012).

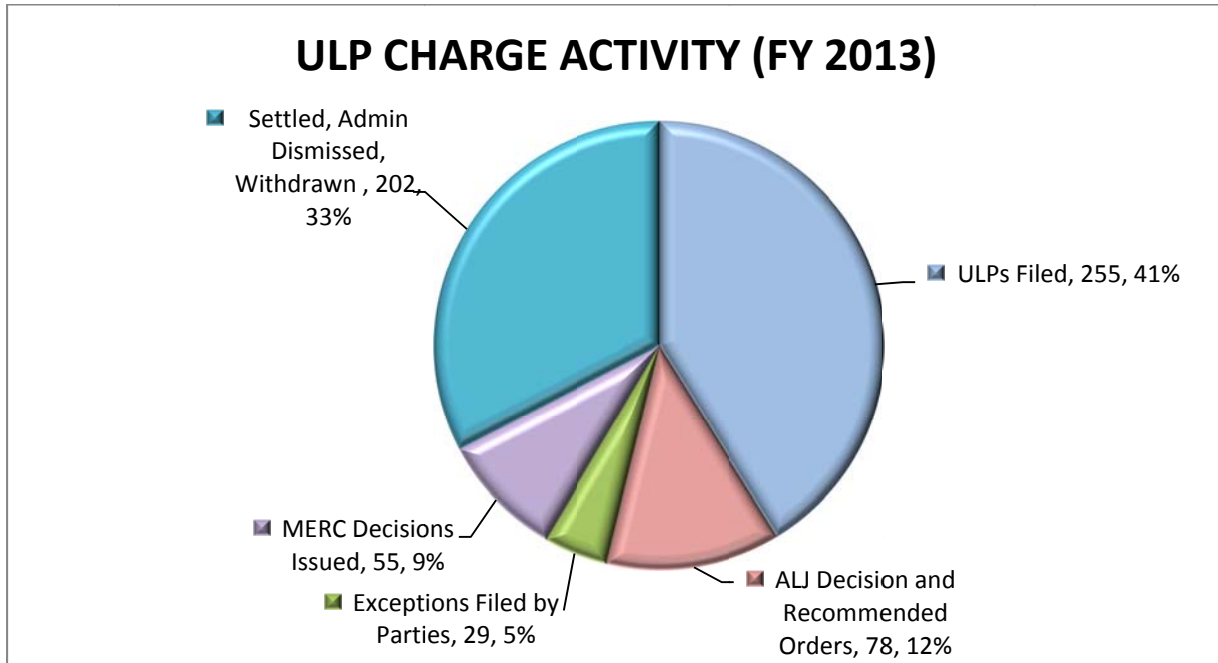
By the close of FY 2013, the Commission had issued a few decisions relative to these legislative changes, including *Michigan State University (Police Dep't)*, 26 MPER 44 (2013) and *City of Detroit*, 27 MPER 6 (2013).

In *Michigan State University (Police Dep't)*, the Commission reviewed changes made to Act 312 by 2011 PA 116 and held that those changes did not extend the right to compulsory arbitration to employees of university police departments. In *City of Detroit*, the Commission examined the relationship between Act 312, as amended by 2011 PA 116, and 2012 PA 436 (the emergency manager law). MERC determined that public employers whose duty to bargain has been suspended under 2012 PA 436 cannot be required to participate in Act 312 compulsory arbitration.

The Commission has several other cases pending involving legislative changes that will be reviewed in FY 2014.

MERC decisions including case “web” summaries are posted on the agency’s website located at www.michigan.gov/merc.

ULP activity at MERC during FY 2013 was:



C. MEDIATION – CONTRACT AND GRIEVANCE

Mediation Overview

Michigan’s Labor Relations and Mediation Act of 1939 (LMA) authorizes employees in the private sector 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 the contact information for the assigned mediator.

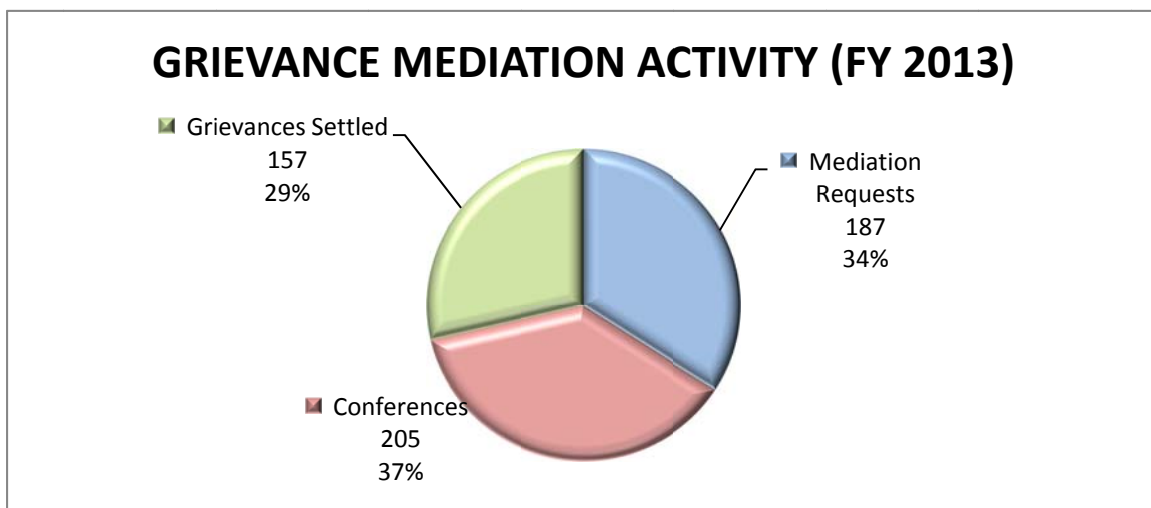
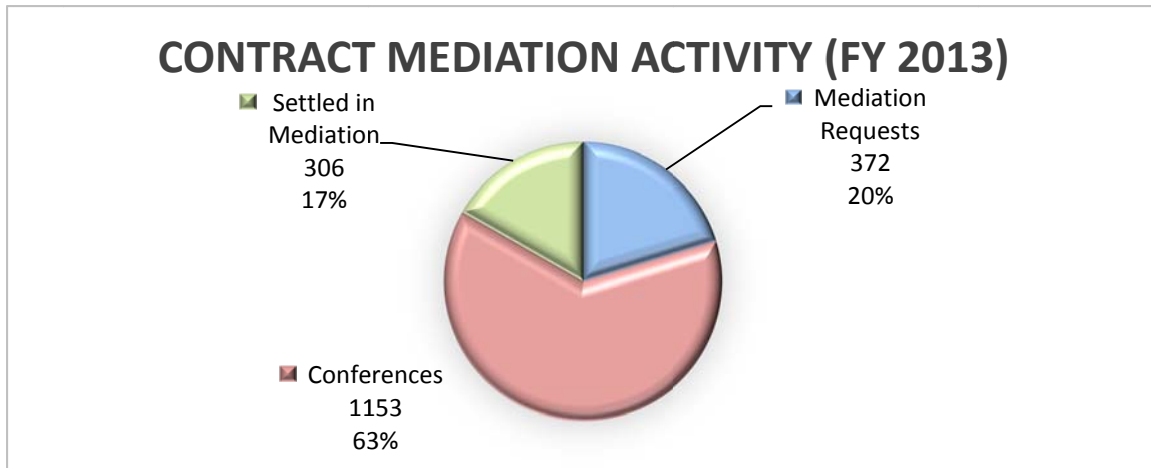
Grievance Mediation

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.

Mediation Activity

During FY 2013, the Mediation Division received and processed 1,835 Status of Negotiations notices. Mediation assistance was initiated in 559 new cases; 372 cases involved contract negotiations, and 187 cases dealt with contract grievances. Mediator involvement resulted in the settlement of 306 collective bargaining agreements and 157 contract grievances. (See charts that follow). These numbers reflect an increase in mediation activity compared to the FY 2012 period.

In addition to increased mediation activity, there was an increase in the complexity of the issues underlying many of the mediation cases during FY 2013. Legislative changes to various statutes affecting labor relations and contract negotiations, as well as an increasing number of jurisdictions facing financial distress, made it extra challenging for mediators to bring parties closer to resolution. In addition, 49 public school districts and academies ended FY 2012 in a deficit position, which carried over into FY 2013. During FY 2013, eleven cities and six public school districts within MERC's jurisdiction operated under the control of an emergency manager.



D. 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.

Labor- Management Committees

The Mediation Division participated in the following labor-management committees comprised of Labor and Management representatives whose aim is to help facilitate good relations between labor and management groups:

The **Michigan Labor-management Association (MLMA)** provides periodic half-day seminars and an annual labor relations conference. Bureau staff actively participate in these programs, providing logistical support in addition to serving as expert presenters on topics of interest to the labor relations community.

The **Kalamazoo Area Labor-management Committee (KALM)** sponsors a regular luncheon meeting 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 without a job action.

The **Muskegon Area Labor-management Committee (MALMC)** sponsors an annual labor-management conference in addition to a student collective bargaining program where professionals work as advisors to students and guide them through mock bargaining exercises. BER mediators attended the program and provided mediation expertise to the participants.

The **Upper Peninsula Labor-management Council (UPLMC)** provides a yearly conference to several hundred across the U.P., with topics relevant to the time. The Council also sponsors student collective bargaining exercises for high school seniors.

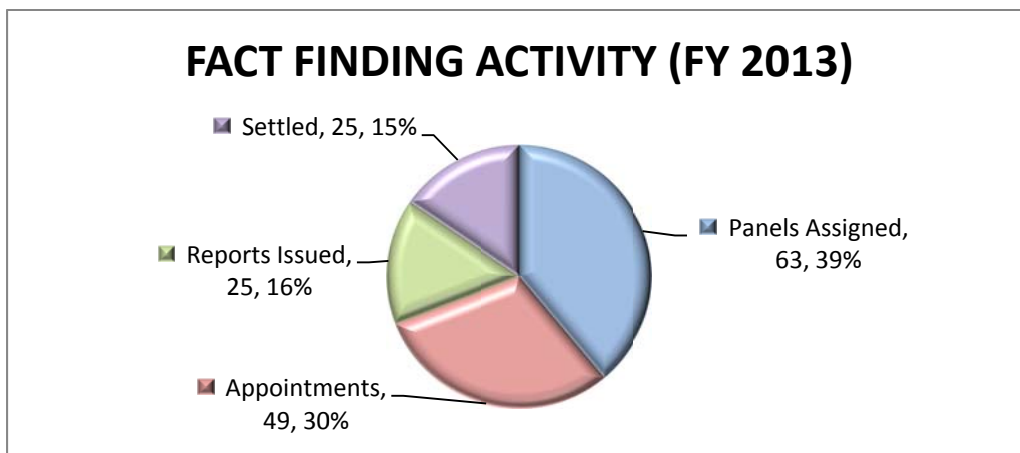
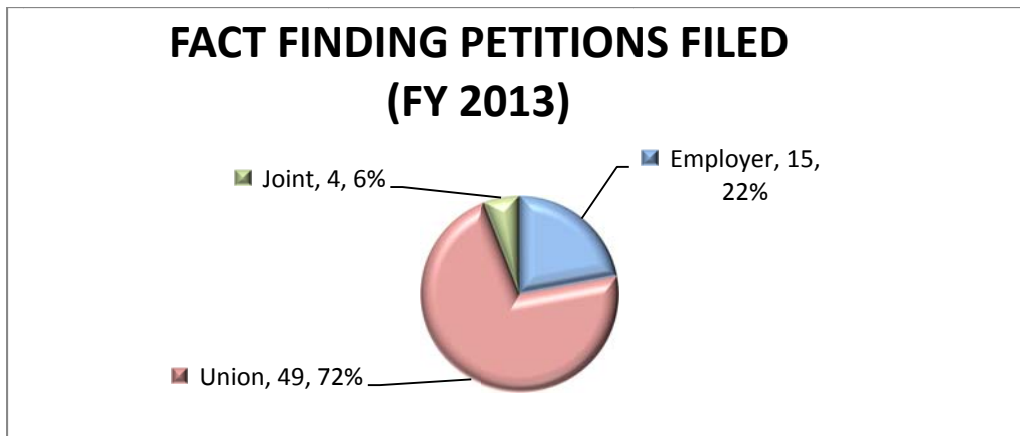
E. FACT FINDING & ACT 312 COMPULSORY ARBITRATION

When collective bargaining and mediation assistance do not result in a complete final labor agreement, a 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 (312).

Fact Finding

The fact finding process is an available avenue to parties subject to PERA that are not eligible for compulsory arbitration under Act 312. Although the recommendation of a fact finder is non-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 viewed as the final impasse resolution procedure available to eligible public sector employees.

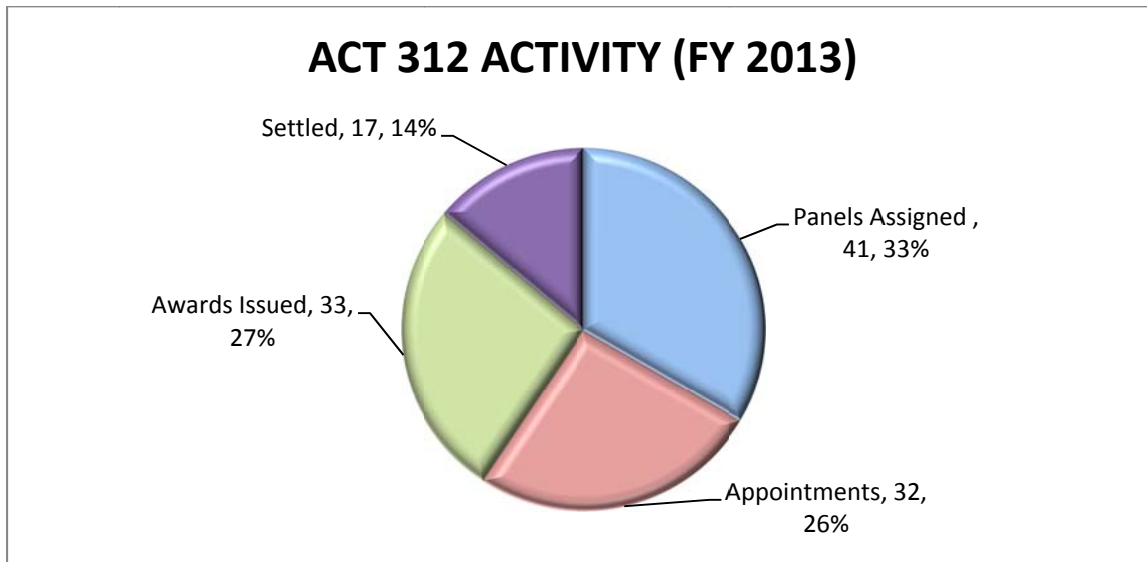
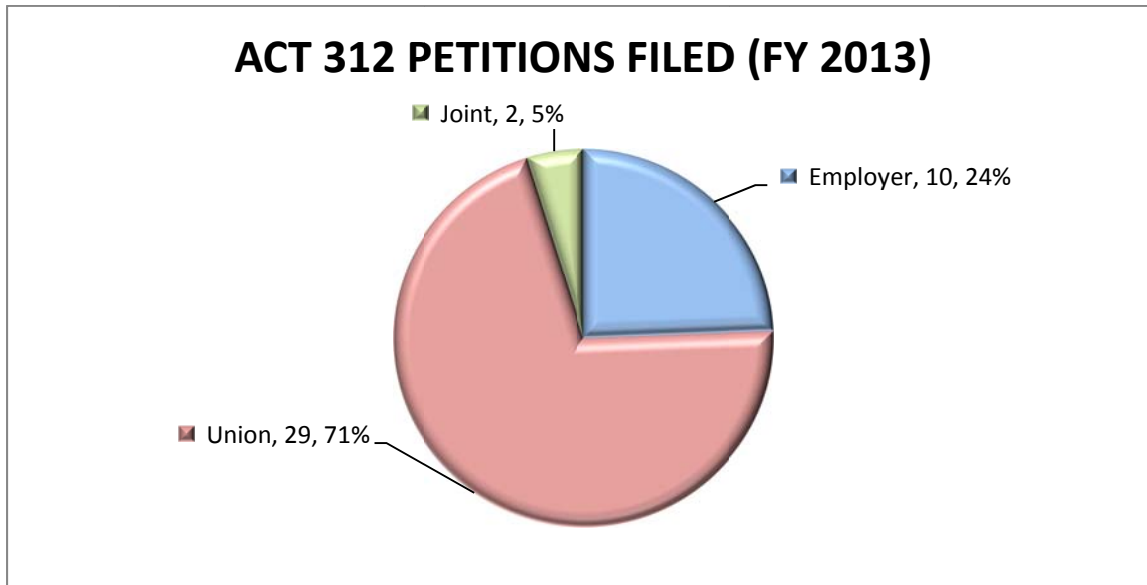
Fact finding activity during FY 2013 included:



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 to expedite the process. Employees generally covered by Act 312 include: police officers, firefighters, emergency medical personnel and emergency telephone operators employed by a municipal police or fire department. Act 17 of 1980 provides similar binding arbitration for state police troopers and sergeants.

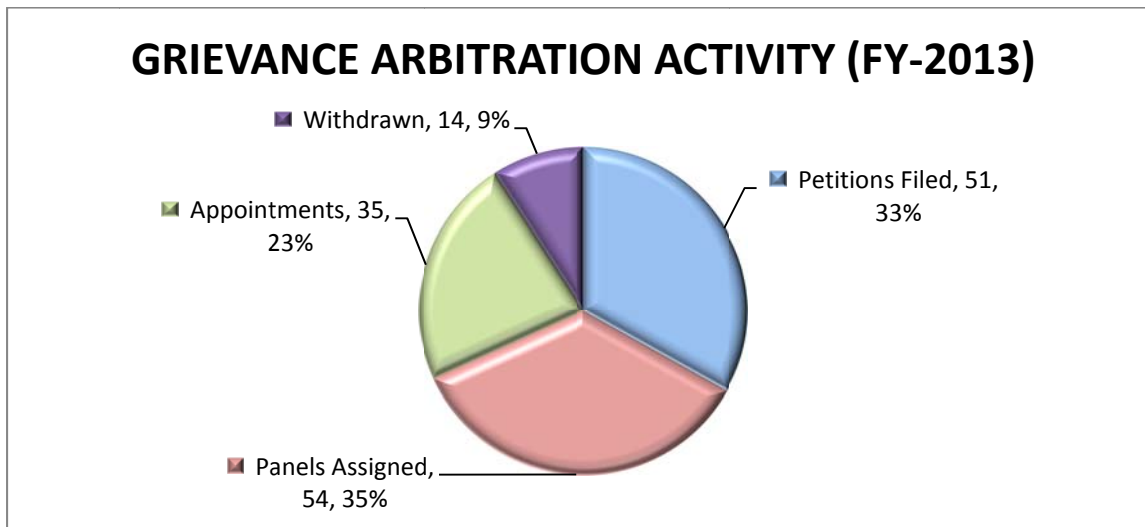
Act 312 activity during FY 2013 included:



F. GRIEVANCE ARBITRATION

Pursuant to its authority to aid parties 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 to the parties for MERC's role in the process, the daily rate set by each 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 during FY 2013 was:



G. UNION AUDITS

In 2011, 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 (4) specifically provides:

Sec. 10 (4) By March 1 of each year, each exclusive bargaining representative that represents public employees in this state shall file with the commission an independent audit of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year. The commission shall make the audits available to the public on the commission's website.

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

During FY 2013, the Commission received 1003 union audits. The posted audits and information for registering to file an audit are available on the Commission's website.

IV. OTHER FY 2013 HIGHLIGHTS

A. BUDGET

The authorized and available appropriation for the Bureau during the fiscal year was \$3,984,500. In addition, pursuant to Public Acts 348 and 349 of 2012, LARA received a special one-time allocation to help implement various aspects of Michigan’s “Freedom to Work” laws (\$2M).

Aside from the one-time FTW allocation from the General Fund, the Bureau is funded exclusively from State Restricted monies.

B. DASHBOARDS (SCORECARD PERFORMANCE SUMMARY)

In 2011, Gov. Snyder established the Michigan Dashboard to measure progress in meeting key objectives and to serve as a catalyst for positive change. The three key metrics identified by BER were: Issuance of Orders, Consent Elections, and Contract Cases Closed by Mediation without an Act 312 Award or Fact Finding Report. This chart represents the overall average of BER’s Dashboard performance during the 12 months in FY 2013.

| MiScorecard Performance | | | | | | | | | | | | | | | | | | |
|---|--------|--------------------------|--------|--|-----------|---|--|-------|--------------------------|--|--------|-------------------------|--|-----|-------------------------|--|-------|----------------|
| Agency: Employment Relations Director: Ruthanne Okun Period: FY 2013 SCORECARD | | | | Legend: <table border="0"> <tr> <td style="background-color: green; width: 20px;"></td> <td>Green</td> <td>90% or greater of target</td> </tr> <tr> <td style="background-color: yellow; width: 20px;"></td> <td>Yellow</td> <td>>=75% to <90% of target</td> </tr> <tr> <td style="background-color: red; width: 20px;"></td> <td>Red</td> <td>less than 75% of target</td> </tr> <tr> <td style="background-color: white; width: 20px;"></td> <td>White</td> <td>not applicable</td> </tr> </table> | | | | Green | 90% or greater of target | | Yellow | >=75% to <90% of target | | Red | less than 75% of target | | White | not applicable |
| | Green | 90% or greater of target | | | | | | | | | | | | | | | | |
| | Yellow | >=75% to <90% of target | | | | | | | | | | | | | | | | |
| | Red | less than 75% of target | | | | | | | | | | | | | | | | |
| | White | not applicable | | | | | | | | | | | | | | | | |
| Metric | Status | Trend | Target | Current | Frequency | Metric Definition | | | | | | | | | | | | |
| Issuance of Orders | | ↑ | 90% | 95.2% | Annual | % Issued within 12 Months of Record Close | | | | | | | | | | | | |
| | | | | 59 of 62 | | | | | | | | | | | | | | |
| Conduct Consent Elections | | ↑ | 70% | 83.6% | Annual | % Held within 65 Days of Filing Petition | | | | | | | | | | | | |
| | | | | 61 of 73 | | | | | | | | | | | | | | |
| Mediate Labor Contract Disputes | | ↑ | 80% | 84.1% | Annual | % Contract Negotiations Closed w/o 312 Award or Fact Finding Report | | | | | | | | | | | | |
| | | | | 254 of 302 | | | | | | | | | | | | | | |
| □ | | | | | | | | | | | | | | | | | | |

C. RULEMAKING

Proposed amendments to MERC's General Rules and the Act 312 Rules continued from the prior fiscal year and moved closer to the public comment stage of process. The proposed changes in each set of rules reflect necessary updates and additions based on legislative amendments and Commission rulings to reflect existing practices and to better clarify current provisions.

Drafts of the proposed changes and any upcoming public hearings will be posted on the websites of the Office of Regulatory Reinvention at www.michigan.gov/orr and the Michigan Employment Relations Commission at www.michigan.gov/merc.

It is anticipated that both sets of revised rules will be finalized and implemented during FY 2014.

D. TRAINING PRESENTATIONS & OUTREACH

Training Presentations

Education and training are important components of the mission at MERC/BER. The following training programs were conducted during FY 2013:

- February 9, 2013, presentation on Unfair Labor Practice Decisions by State Labor Relations Agencies to the State and Local Government Bargaining and Employment Law Committee of the American Bar Association's Labor and Employment Law Section.
- February 28, 2013, presentation on Developments in Michigan Public Sector Labor Law under PERA at the Labor Law Update Conference sponsored by the Michigan State University Labor Education Program.
- April 4, 2013, presented the Annual Review of MERC Cases, covering decisions issued March 2012 – February 2013, at the 38th Annual Labor Employment Law Institute presented by the Institute for Continuing Legal Education.
- April 18 & 19, 2013, Spring Training Program designed for MERC Fact Finders, Act 312 Arbitrators and Agency Constituents. Covered topics included review and updates on MERC processes and services, and case review and discussion presentations relating to public sector collective bargaining in Michigan after various legislative changes.
- May 16, 2013, Freedom to Work presentation to the Oakland Association of School Personnel Administrators.
- September 19, 2013, Freedom to Work presentation, Michigan Public Employer Labor Relations Association (MPELRA).
- Collaborative Bargaining training for employer-labor groups such as the Grand Haven Board of Light and Power, as well as the Lakeshore School District in Stevensville.

- Collective Bargaining presentations to a number of organizations including:
 - Capitol City Lodge of FOP
 - POLC Southeast Stewards
 - POLC State Conference
 - Michigan Public Employer Labor Relations Association
 - County Road Association of Michigan
 - Calhoun County Consortium of Municipalities
 - Upper Peninsula Labor-Management Council
 - MERC Arbitrator and Fact Finder Training Program
 - Grand Valley State University Labor Law class
 - Michigan Labor-management Association

Michigan Public Employer Labor Relations Association (MPELRA)

MPELRA is a nonprofit organization that represents employers. It provides education, communication and networking opportunities to promote the development of public sector professionals with labor relations responsibilities in Michigan. During FY 2013 the following BER and MAHS staff members drafted articles for the upcoming MPELRA Manual scheduled for release in FY 2014:

Authors

Articles

Denise Hinneburg

Representation Proceedings in Public Sector Employment in Michigan

Sidney McBride

Labor Mediation in Michigan

Lynn Morison & Carl Wexel

Recent Developments at MERC

James Spalding

Introduction to Public Sector Labor Relations; Overview and History

Julia Stern, ALJ (MAHS)

Practice & Procedure in ULP Proceedings Under PERA; Unit Determinations Under PERA

E. ADVISORY COMMITTEES

The Commission established two advisory committees to offer recommendations to MERC and the Bureau on various processes. The mission and charge for the advisory committees are:

Act 312/Fact Finding Advisory Committee

Mission and Charge: Improve avenues for administering and streamlining the Act 312 and Fact Finding procedures and to improve the quality of both the panel composition and the decisions/recommendations of panel members.

The committee began its meetings in September, 2013 and plans to submit recommendations to the Commission in the first quarter of FY 2014.

General Advisory Committee

Mission and Charge: Provide input and advice to the Commission and Bureau of Employment Relations on changes in procedures that will expedite case processing and improve services to the public. The committee will hold its first meeting in early FY 2014.

F. FREEDOM TO WORK (FTW)

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In December, 2012, Michigan became the 24th state to enact “Freedom 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 any employee to join a union or pay union dues or agency fees as a condition of obtaining or continuing employment.

Under FTW laws, employees within this state 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.

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

V. MERC WEBSITE & RESOURCE MATERIALS

MERC's website located at www.michigan.gov/merc was enhanced in FY 2013 by adding a convenient search feature for Commission decisions issued since August 1998. A search may be conducted using the MERC case number, name of a party, or a key word contained within the Decision and Order. Feel free to use any of the links below or type in the general website URL to access the various materials and information from the MERC website.

Feel free to click on the following links for direct web connection to specific topics of information:

- [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 Forms](#)
- [MERC Guide, Rules, and Statutes](#)
- [MERC Policies](#)
- [Chart of Legislative Changes](#)
- [MERC Panel Members \(Act 312 Arbitrators, Fact Finders and Grievance Arbitrators\)](#)
- [Union Audits](#)
- [BER Offices and Staff](#)
- [What's New at MERC](#)

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

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