

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FISCAL YEAR 2016 ANNUAL REPORT
(October 1, 2015 thru September 30, 2016)



Prepared by Bureau of Employment Relations Staff
Adopted: November 9, 2016

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INTRODUCTION

MESSAGE FROM THE COMMISSION CHAIR

On behalf of the Michigan Employment Relations Commission (MERC), I am pleased to submit our 2015-2016 Annual Report. For a more than a half-century, the Public Employment Relations Act (PERA), administered by the Bureau of Employment Relations (the Bureau or BER), has guided labor and management representatives as they seek to resolve labor relations disputes and negotiate collective bargaining contracts in Michigan. The provisions of PERA, coupled with high caliber labor relations professionals, have provided stability for employers and labor organizations, alike.

Consistent with the Bureau's mission, a number of training presentations and outreach programs were conducted during this fiscal year. This included Basics Training programs for labor and management representatives throughout the State of Michigan. These successful trainings were due in large part to the leadership of our Mediation Division and the partnerships they have established with organizations that include: the Metropolitan Detroit Bureau of School Studies; the Michigan Education Association; the Muskegon Intermediate School District; the Kalamazoo Area Labor Management Committee; and the NLRB.

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 to reach resolution in public safety disputes, resulting in fewer petitions for Act 312 Arbitration. In addition, our mediators have worked collaboratively with school districts and municipalities that have faced a financial emergency consistent with the requirements of Michigan's 2015, public school deficit elimination plan legislation.

Also noteworthy is that a new template has been adopted by MERC, which provides for a standardized format to be used by all Act 312 Arbitrators and Fact Finders in drafting their awards/reports.

Under the capable leadership of Bureau Director Ruthanne Okun, Bureau staff have developed proposed Administrative Rules pursuant to the adoption of Public Act 194 of 2016. This law amended the Public Employment Relations Act (PERA) to revise the process for handling teacher strikes and lockouts in order to provide a more effective and efficient means for addressing these violations of PERA. Dashboard metrics that measure the time in which Orders are issued and elections are conducted clearly indicate successful accomplishment of key objectives. These serve as a catalyst for positive change in fostering cooperative labor-management relations. Moreover, Bureau staff employee engagement scores remain among the highest in state government – a reflection of the ability of BER staff to work together to accomplish the agency's mission and goals.

As FY 2017 commences, MERC/BER will continue to approach existing and new challenges with a continued zeal to foster productive labor-management relations in workplaces throughout the State. Visit the MERC website at www.michigan.gov/merc for updated information, and please share any feedback on how we may better serve the labor-management community.

Respectfully submitted,
Edward D. Callaghan, Chair

COMMISSION MEMBERS

MERC CHAIR EDWARD D. CALLAGHAN

Edward D. Callaghan was appointed as Chair of the Michigan Employment Relations Commission on June 20, 2011 and was re-appointed on June 6, 2014. 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. 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 appointment is for a 3 year term, expiring on June 30, 2017.

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. Commissioner LaBrant previously served as Senior Vice President and General Counsel at the Michigan Chamber of Commerce where he retired from after nearly 35 years. Commissioner LaBrant came to the Michigan Chamber from the Business-Industry Political Action Committee in Washington, D.C.

Commissioner LaBrant also worked for the Appleton, WI Area Chamber of Commerce and the Metropolitan Milwaukee Association of Commerce. He 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 Thomas M. Cooley Law School.

Commissioner LaBrant's appointment is for a 3 year term, expiring on June 30, 2018.

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 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 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, 1960-2016:

- Allen D. Chisholm
- Malcolm R. Lovell, Jr.
- Robert Howlett
- Charles Rehmus
- Morris Milmet
- William M. Ellmann
- David S. Tanzman
- Joseph B. Bixler
- Maris Stella Swift
- Honora J. Lynch
- Christine A. Derdarian
- Edward D. Callaghan

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 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.

Bureau Directors from 1971 and 2016:

- Hyman Parker
- Robert Pisarski
- Shlomo Sperka
- Ruthanne Okun

Supervision of Wage and Hour Division

During FY 2016, the Wage and Hour Division within LARA was transferred from the Michigan Occupational Safety and Health Administration (MIOSHA) to the Bureau of Employment Relations for organizational and operational efficiency. With the transfer, BER Director Ruthanne Okun and BER Mediation Supervisor James Spalding assumed supervisory responsibility over the Wage and Hour Division.

Staff Biographies

Ruthanne Okun, BER Director has been in the field of labor and employment relations for the past 35 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 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.

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 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 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.

Seth A. Filthaut began working for the Bureau in March of 2015 - first, as a law clerk, and, later, as a Department Specialist. Seth graduated from Grand Valley State University in 2011 with a B.S. in Criminal Justice and from Michigan State University College of Law, *cum laude*, in 2014 before passing the July 2014 Michigan Bar Exam. During law school he performed an externship at Region 7 of the National Labor Relations Board in Detroit, MI. Seth is also a member of the Labor and Employment Law Section of the State Bar of Michigan. Seth left BER on November 7, 2015 to begin his career at Collins and Blaha.

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.

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 currently holds the position of Mediation Secretary in the Lansing BER office and secretarial support to the Elections Officer in Detroit and 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. Previous to coming back to State service, she worked as a Legal Secretary in a private practice law firm and the office manager to a family owned construction business, which she still does.

Wanda Mayes is 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 and 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, member of the 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, 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 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 previously served as the Neutral Co-chair of that Committee's subcommittee on Practice & Procedure – Unfair Labor Practices. She is also an active member of the Labor and Employment Law Section of the State Bar of Michigan. Ms. Morison received a B.A. from Michigan State University, a J.D. from the University of Michigan, and an L.L.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 Olszewski joined the Bureau in 2014 as a paralegal. Prior to her employment with BER, Ms. Olszewski worked for five years as a Family Law Paralegal and concurrently, for two years as an HR Specialist with an IT staffing firm. In 2009, she 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.

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 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 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. James 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 since January of 2009. He previously 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 2009. From 1991 to 2009, he held 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.

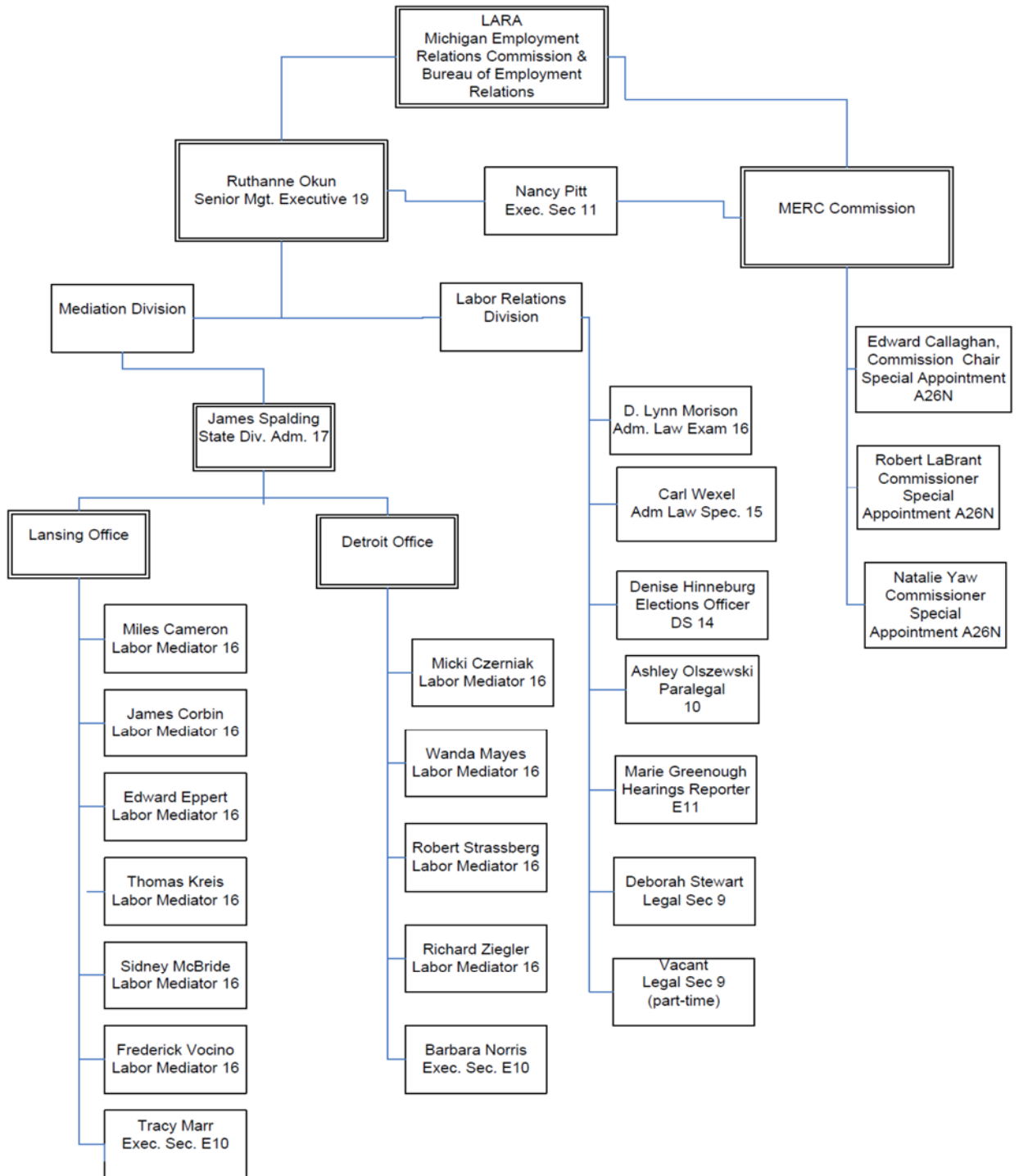
W. Ann Warner came to the Bureau of Employment Relations in October 2013 as an Administrative Law Specialist and retired from State service on December 21, 2015.

Carl Wexel works as an Administrative Law Specialist for the Bureau of Employment Relations/Michigan Employment Relations Commission and was previously employed by the Bureau as a law clerk. 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 Master 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.

ORGANIZATIONAL CHART

As of September 30, 2016



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 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.

MERC 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, 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 the State Bar of Michigan's Labor & Employment Law Section.

ALJ Travis Calderwood began hearing cases on behalf of MERC in May of FY 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. 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.

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.
- 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.

SIGNIFICANT LEGISLATIVE CHANGES AND ENACTMENTS

Since 2011, collective bargaining in Michigan (primarily public sector) has been greatly impacted by various amendments to PERA, 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 areas as: expansion of the prohibited subjects of bargaining for employees subject to the teacher tenure act, including discipline, evaluation, layoff and recall (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 Act 312-eligible police and fire department employees (2011 PA 116); ability of 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); re-definition of emergency manager laws (2012 PA 436); exclusion of Act 312-eligible employees from the provisions of PA 54 (2014 PA 322); and changes to the union audit filing requirement (2014 PA 414).

As a result of these new laws, the Commission began to issue decisions during FY 2013 and FY 2014 that interpreted the amendments and continued to issue decisions during FY 2015 and FY 2016. (See the ULP section beginning on page 19). An updated chart of these legislative changes, annotated with a brief description and reference to the MERC decisions issued relative to the new law(s), 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.

Emergency Manager Appointments and Consent Agreements¹

At the opening of FY 2016 (10/1/15), one municipality and three school districts in Michigan were experiencing a financial emergency and were operating under an Emergency Manager. An additional four municipalities and two school districts were operating pursuant to a Consent Agreement. Six other municipalities were in receivership with a Transition Advisory Board. Two local units of government were under review to determine if a financial emergency existed.

At the close of FY 2016 (9/30/2016), three municipalities and five public school districts within MERC's jurisdiction were operating under the control of an Emergency Manager or with a Consent Agreement. In addition, six municipalities were in receivership with a Transition Advisory Board at the helm.

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 districts'

¹ State of Michigan, Department of Treasury, Emergency Manager Information Report

² State of Michigan, Department of Education Quarterly Report to the Legislature on Deficit Districts, September 16, 2015 and September 7, 2016.

progress in reducing those deficits. The Michigan Department of Education reported 41 school districts and public school academies in deficit at the close of 2015, down from the 58 districts in deficit at the close of FY 2014.

The State Department of Education's final quarterly report covering FY 2016 reflected the status of the deficit districts at the close of the fiscal year, as follows:

- 17 deficit districts projected elimination of their deficit by June 30, 2016, subject to final audit.
- 16 districts projected a reduced deficit.
- 5 districts projected an increased deficit.

No districts that began FY 2016 with a positive fund balance were projected to end the fiscal year in deficit.

Early Warning Legislation³

On July 7, 2015, Governor Snyder signed into law Public Acts 109-114, providing the 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.

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. Beginning in January of 2016, four school districts were subject to preliminary review.

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 2016, as in the last several years, collective bargaining continued to be difficult, especially with some locations facing a new level of enhanced financial reporting requirements due to the early warning legislation referenced above. A mix of minimal wage increases in some locations and some salary schedule step increases appeared in FY 2016, but those modest increases continued to be offset by increased employee cost for health care and retirement benefits. Bureau mediation staff continued to face complex and difficult circumstances while striving to assist the parties in reaching settlements.

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

Through interagency cooperation between BER and the Michigan Department of Education, a public school district identified as facing a growing level of financial distress was brought to the attention of the Bureau's mediation supervisor at an early stage with an inquiry about the feasibility of prompt mediation assistance. The particular school district was about to be placed into a process potentially leading to the appointment of an emergency manager and was also about to enter into negotiations for a successor collective bargaining agreement with the teachers' union. Both the status and outcome of the negotiations were monitored. Early mediation services were initiated with the concurrence of the parties and with the assistance of the assigned mediator, often, a satisfactory and timely settlement was reached addressing critical financial concerns.

An updated Department of Treasury Emergency Manager Information Report and a Department of Education Deficit School District Report are submitted to the Michigan Employment Relations Commission for review and consideration at each of its regular meetings.

Municipal Finance & 2012 PA 436

During FY 2015, two of Michigan's largest municipal employers utilized MERC services as part of an effort to reduce their large deficit budgets. In each situation, the respective parties were faced with adopting new collective bargaining strategies (compared to the traditional style) in light of the application of 2012 PA 436, Michigan's emergency manager law. In December, 2014, the City of Detroit exited from the largest public sector bankruptcy in U.S. history, having relied (in part) on the appointment of an emergency manager (EM). Conversely, the County of Wayne chose not use an EM and, instead, bargained with its represented employee groups as part of a Consent Agreement approved by the State. Below is a brief comparison that contrasts MERC's involvement and the bargaining processes utilized under the different, but related, provisions of 2012 PA 436.

Detroit's EM & Bankruptcy

As noted in our previous Annual Reports, during FY 2013, the State appointed an EM in the City of Detroit to address a financial emergency. The EM suspended all collective bargaining activity impacting all represented employee groups, except for employees in the Detroit Water and Sewerage Department (DWSD)⁴ and others subject to the Federal Urban Transit Act. The suspension of collective bargaining for most groups also raised a question regarding those employees eligible for compulsory arbitration under Act 312. While Act 312 had long been viewed as an extension of PERA, some representatives asserted that the law operated separately and independently. In FY 2014, MERC decided the question by ruling that Act 312 operates as an extension of the collective bargaining process authorized under PERA. MERC dismissed all Act 312 petitions involving the City based on the EM's choice to suspend collective bargaining due to the financial emergency.

Also during the EM's tenure, the City filed for Chapter 9 protection in federal bankruptcy court. This action stayed all litigation including any labor relations matters pending before MERC that involved the City of Detroit. However, employee bargaining units subject to protections under the Federal Urban Transit Act (e.g. bus drivers and bus mechanics) were permitted to utilize MERC's

⁴ Although the EM had suspended most bargaining, collective bargaining for City employees in the DWSD continued subject to Orders issued by U. S. District Judge Sean F. Cox in November, 2011.

labor mediation and fact finding processes. This exception was chosen due to risk of losing federal funds provided to the City's transportation department had the EM been permitted to unilaterally apply the City Employment Terms (CETs) that had been imposed on other employee groups.

At the close of the bankruptcy process in FY 2015, MERC was holding in abeyance sixty-seven (67) cases involving the City which had been filed prior to and/or during the bankruptcy--mostly unfair labor practice charges. This agency seeks to handle and/or close (if appropriate) these cases as promptly as possible, especially where the underlying dispute may be moot and/or ripe for voluntary resolution or dismissal. In April 2015, MERC was authorized to resume processing those cases, many of which had gone 'stale' while being held in abeyance. Labor Mediators sought out opportunities for voluntary withdrawal or settlement; ALJs re-activated cases which had been suspended mid-way through adjudication; and MERC legal staff initiated action on those cases in which previously filed exceptions had been stayed. While these efforts continue, the overall number of pending pre-bankruptcy cases involving the City of Detroit had been reduced from sixty-seven (67) to twenty-three (23) by the end of FY 2016.

Wayne County's Consent Agreement

Early in January 2015, the newly-elected County Executive began to address Wayne County's looming deficit by relying on options under PA 436. Rather than following the EM approach as in Detroit, the County sought to obtain state approval of a comprehensive Consent Agreement. This process differs from using an EM because it allows the parties to collectively bargain for a limited time period in order to obtain ratified collective bargaining agreements (CBAs) that become part of a final Consent Agreement to be approved by the State's Treasury Department.

In light of the short timeline, management and labor representatives worked tirelessly with MERC labor mediators to avoid application of the more stringent provisions of PA 436. By the beginning of FY 2016, the County had successfully ratified collective bargaining agreements with all but one of its represented employee groups. Subsequently, the County imposed terms and conditions on the one represented employee group with which it had not reached an agreement. MERC continues to monitor the situation and to offer assistance.

MERC PROCESSES

REPRESENTATION PETITIONS AND 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 a position(s) when an employer and labor organization disagree on the placement of a newly-created or substantially changed classification(s). 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 classification. No balloting or election occurs with a UC petition.

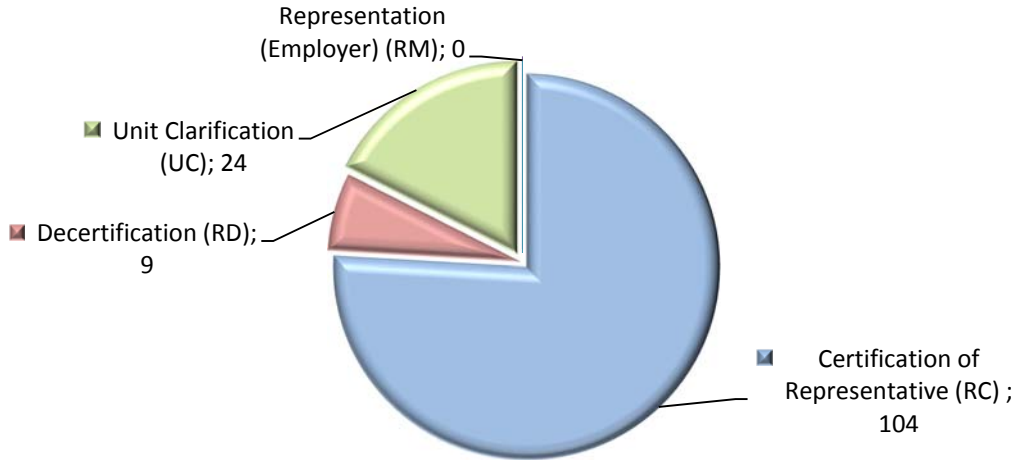
Consent Elections or Commission Directed Elections

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.

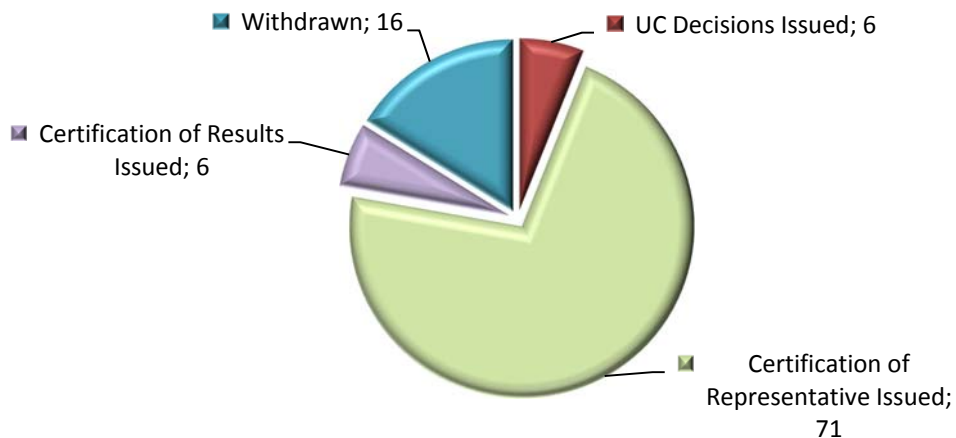
Election Outcomes

When a labor organization receives a majority of the valid ballots cast in a representation election, the Commission issues a **Certification of Representation** declaring that entity as the exclusive bargaining representative 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. During FY 2016, the following representation petition activity occurred:

REPRESENTATION PETITIONS FILED (FY 2016)



REPRESENTATION PETITION OUTCOMES (FY 2016)



UNFAIR LABOR PRACTICES – FY 2016

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” to the parties 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 exceptions are not filed, the Commission issues a final order adopting the ALJ’s decision as its own.

During FY 2016, case activity routinely involved charges filed by employers, labor organizations, and individuals asserting violations of the duty to bargain, the duty of fair representation, and the right to engage in or refrain from protected concerted activity. As in FY 2015, the Commission received several charges regarding the impact of various legislative amendments enacted since 2010. In FY 2016, the Commission resolved unfair labor practice charges that involved the impact of 2011 PA 152 (sets limits on employer contributions to employee health care costs); 2011 PA 103 (expands number of the prohibited subjects of bargaining for public school employers and the labor organizations representing public school employees subject to the Teacher Tenure Act); 2012 PA 53 (prohibits school districts from collecting union dues or fees via payroll deduction); 2012 PA 349 (“Freedom to Work” for public sector employees); and 2012 PA 436 (permits the appointment of an Emergency Manager where a financial emergency exists and also suspends the duty to bargain for up to 5years).

In *Wayne County*, Case No. D14 A-0018, issued on October 16, 2015, the Commission held that, where an employer has no duty to bargain under 2012 PA 436, that employer may choose to participate in Act 312 (compulsory) Arbitration, but cannot be compelled to do so. On this basis, the Commission granted the Employer’s motion to dismiss the Act 312 arbitration.

In *Traverse Bay Intermediate School District*, Case No. C12 G-129, issued on October 21, 2015, the Commission held that the Employer did not violate PERA by increasing employees' share of insurance premiums following the expiration of the parties' collective bargaining agreement in order to comply with 2011 PA 152. The Commission found the Employer’s conduct appropriate notwithstanding the fact that the contract included a health insurance provision that extended beyond the agreement's expiration date.

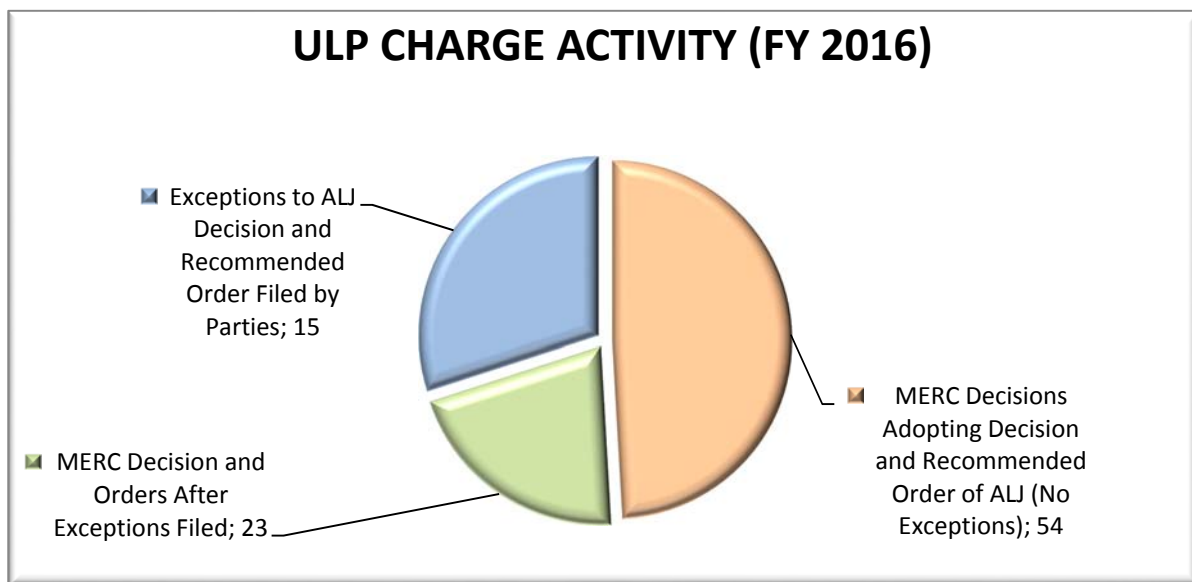
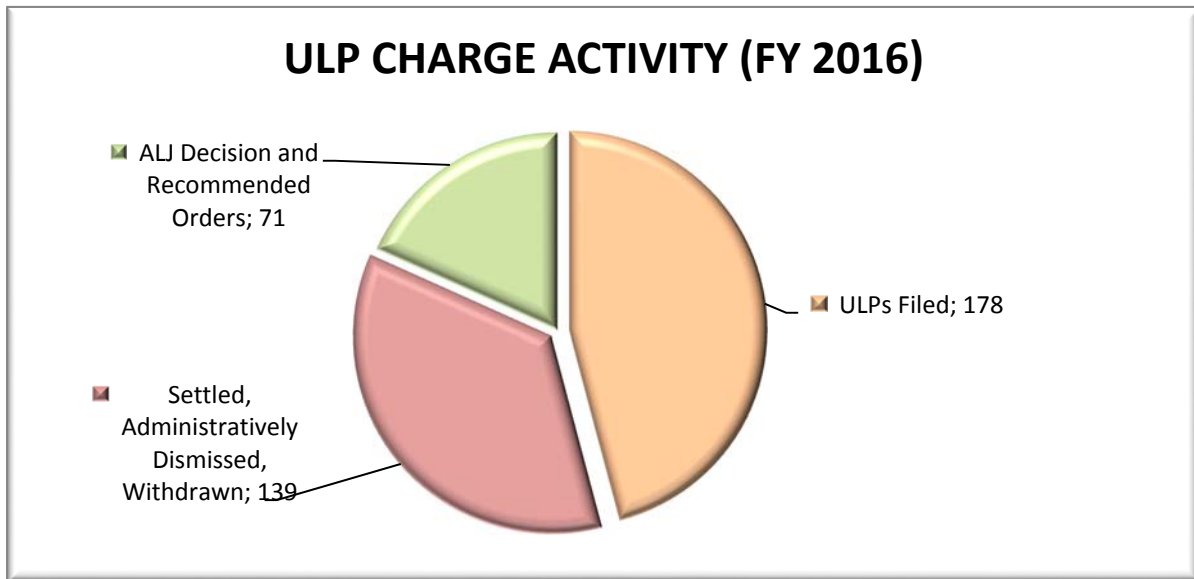
In *City of Ecorse*, Case No. C15 I-123, issued on May 13, 2016, the Commission found that an employer’s five-year exemption from the duty to bargain under §27(3) of 2012 PA 436 began on the date on which an emergency financial manager was first appointed and not on the effective date of Act 436. On this basis, the Commission concluded that the Employer violated PERA by refusing the Union's demand to meet to bargain a new collective bargaining agreement.

In *Shiawassee Intermediate School District Education Association, MEA/NEA*, Case No. CU15 F-019, issued on July 25, 2016, and in *Ionia County Intermediate Education Association, MEA/NEA*, Case No. CU15 H-024, issued on August 15, 2016, the Commission found that the Unions breached their duty to bargain by demanding to arbitrate grievances over discipline or discharge of a teacher, a prohibited subject of bargaining under 2011 PA 103.

Additionally, in FY 2016, the Court of Appeals affirmed the Commission’s decision regarding PA 152 in *Shelby Township*, Case No. C12 D-067. This case is currently before the Michigan Supreme Court on application for leave to appeal. The Court of Appeals also affirmed the Commission’s decisions on prohibited subjects of bargaining in: *Calhoun Intermediate Educational Association* Case No. CU12 B-009, *Ionia Public Schools*, Case No. C12 E-094, and *Pontiac School District*, Case No. C12 D-079.

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

ULP activity at MERC during FY 2016 is reflected in the following chart:



“FREEDOM” (RIGHT) TO WORK (FTW)

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 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 2016, the Commission reviewed 5 cases involving the application of 2012 PA 349:

In *Teamsters Local 214 (Beutler)*, Case No. CU13 I-037, issued on December 11, 2015, the Commission found that, although the Charging Party’s resignation letter was effective to end her union membership, her financial obligation to the union did not end with her membership resignation. The Commission noted that, after expiration of the union security clause in the collective bargaining agreement, Charging Party knowingly and voluntarily chose to be a union member and chose to waive her right to refrain from financially assisting the union for the period designated in the checkoff authorization. Consequently, the Commission held that her financial obligation to the union did not end with her membership resignation.

In *Teamsters Local 214 (Cottrell)*, Case No. CU13 K-067, issued on January 14, 2016, the Commission held that the Respondent violated PERA by failing to acknowledge Charging Party’s status as an objecting fee payer. Charging Party was not bound by the checkoff authorization to continue to pay union dues because Charging Party was subject to a union security clause and, therefore, his agreement to support the Union could not be considered voluntary. The Commission also held that the Respondent could not lawfully require employees to provide notice of their dues checkoff revocation via certified mail.

In *Standish-Sterling Educational Support Personnel Association/MEA*, Case No. CU14 B-002, issued on January 15, 2016, the Commission held that Charging Party, an employee covered by a collective bargaining agreement that contained a union security clause, had the right to resign his

union membership at will and to immediately become an objecting nonmember. By restricting Charging Party's resignation to an annual one-month period in August and not allowing him to immediately pay a reduced agency fee, the Respondent violated PERA.

In *Teamsters Local 214 (House)*, Case No. CU14 C-010, issued on February 10, 2016, the Commission found that the Respondent should have immediately informed Charging Party, an employee covered by a union security clause, of the amount of her pro rata share of the Union's chargeable expenses for collective bargaining. Respondent's failure to do so, however, did not adversely harm Charging Party since she paid no dues after resigning.

In *Grand Blanc Clerical Association/MEA*, Case Nos. CU14 C-020 and CU14 C-009, issued on February 11, 2016, the Commission held that Respondents violated § 10(2)(a) of PERA by refusing to accept Charging Parties' union resignations outside of their August window period and that the Union's threat to use a debt collector to collect dues to which the Union was not entitled was unlawful.

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.

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 with 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 FY 2016

During FY 2016, the Mediation Division received and processed 1805 Status of Negotiations notices indicating that a collective bargaining agreement is open for negotiations. Mediation assistance was initiated in 308 of those negotiations resulting in 867 mediation conferences. In addition, the Mediation Division received 292 requests for mediation assistance in contract grievances. There were 275 grievance mediation conferences. Mediator involvement resulted in the settlement of 207 collective bargaining agreements and 248 contract grievances. (See charts that follow). These numbers reflect a continued increase in grievance mediation activity over the prior fiscal year. It is notable that 85% of grievances mediated during FY 2016 were settled in mediation, avoiding the significant costs of arbitration in dollars and the time required to prepare and present a case in arbitration.

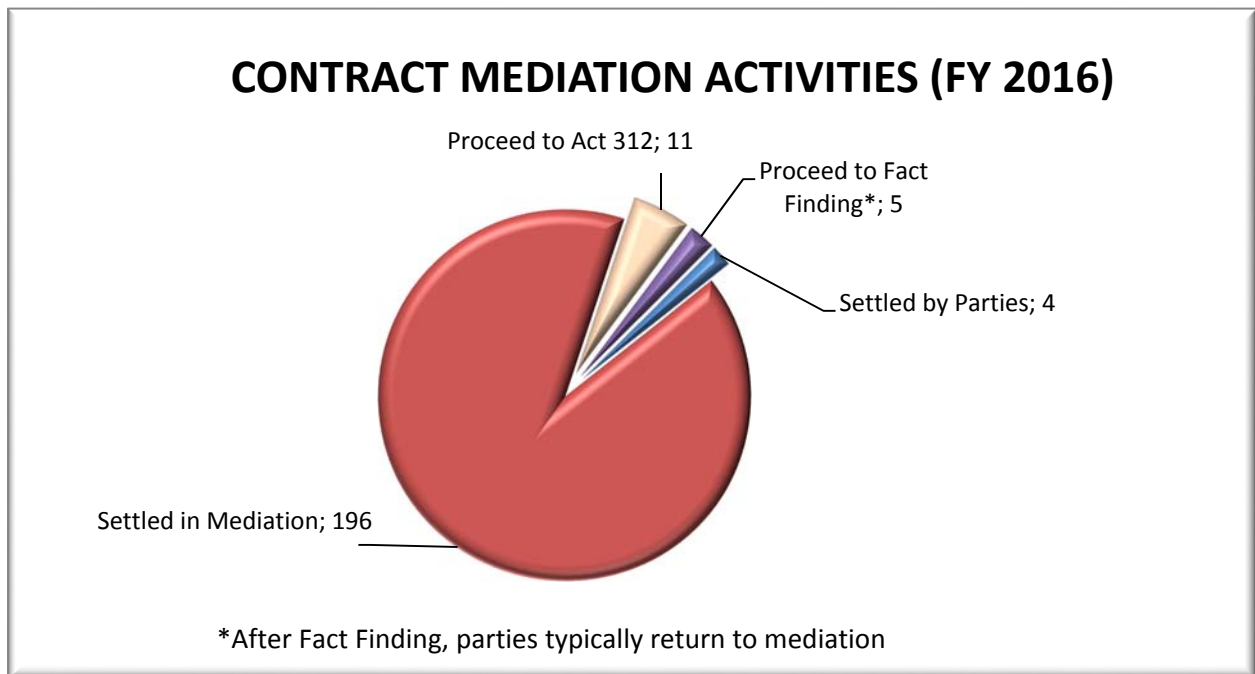
Although mediator assistance resulted in the settlement of 196 collective bargaining agreements in FY 2016, a number of factors increased the difficulty of mediating agreements. Initially, many of the collective bargaining agreements that were quickly negotiated in early 2013 to avoid PA 349’s prohibition on union security clauses expired in FY 2016. While unions may have been under pressure to negotiate favorable agreements in order to maintain membership, at the same time, 2011 PA 54 eliminated retroactivity in public sector settlements and made it more difficult to obtain favorable agreements. As a result, frustration and anxiety were elevated in many contract negotiations, and the mediation staff was required to operate in an often hostile environment in order to resolve labor disputes.

In addition to this, some bargaining units are comprised of employees that are eligible for Act 312 arbitration and some employees who are not eligible. Under Public Act 322 of 2014, however, employees who are eligible for Act 312 arbitration 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 were prohibited from receiving retroactive wage increases and step advancement. In addition, 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. Consequently, Act 312

eligible employees may hold out for a better settlement, potentially through Act 312 Arbitration, without tangible financial risk. The employees not eligible for Act 312, however, face immediate financial loss upon contract expiration.

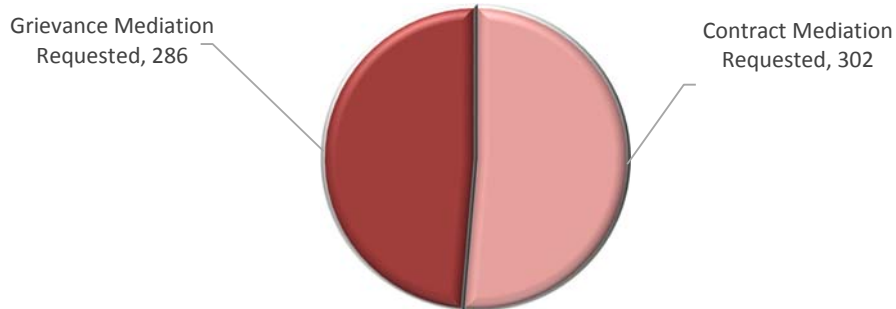
Additionally, PA 349’s prohibition on union security language does not apply to Act 312 eligible employees. Therefore, those employees not eligible for Act 312 arbitration, if frustrated by the slow pace of negotiations and the significant financial impact imposed on them at contract expiration, may withhold union dues without fear of retaliation since they are no longer compelled to financially support the labor organization representing them. In some mixed units, the union and the employer found it advantageous to split the bargaining unit along lines of Act 312 eligibility and ineligibility and to negotiate separate agreements.

The charts below set forth the Mediation Division activity during FY 2016:

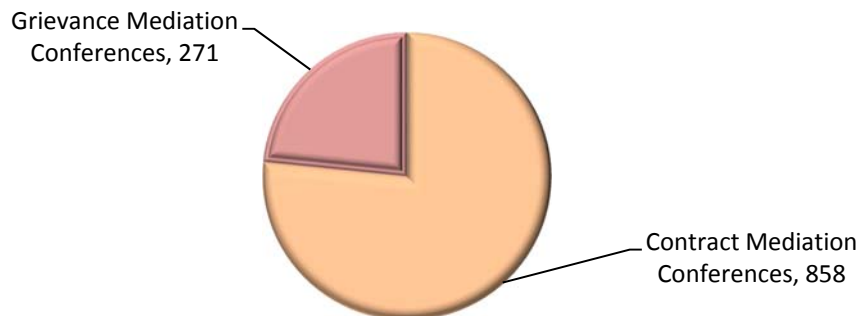


As indicated in the following chart, grievance mediation has grown to be a popular service to the agency’s constituents and has become a significant activity within the BER Mediation Division. Grievance mediations are usually completed in one session, while contract mediation frequently requires numerous conferences to reach settlement due to the number and complexity of the issues. Grievance mediation continues to be promoted as a cost effective and more expedient means to resolve contract interpretation disputes in both the public and private sectors.

MEDIATION REQUESTED (FY 2016)



MEDIATION CONFERENCES (FY 2016)



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 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.
- 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 on relevant and timely topics. The Council also sponsors student collective bargaining exercises for high school seniors.

FACT FINDING & ACT 312 COMPULSORY ARBITRATION

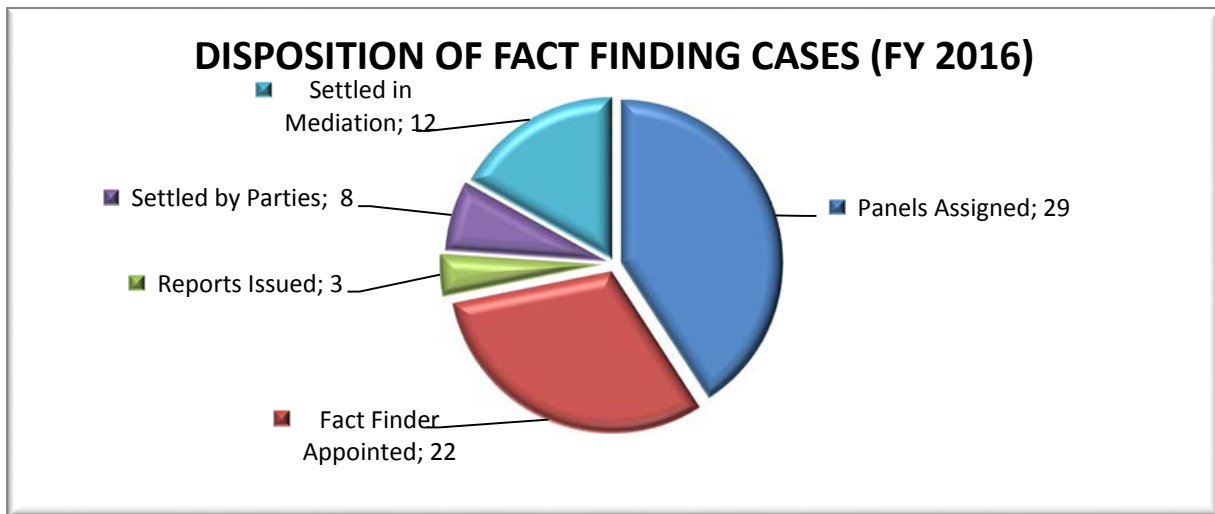
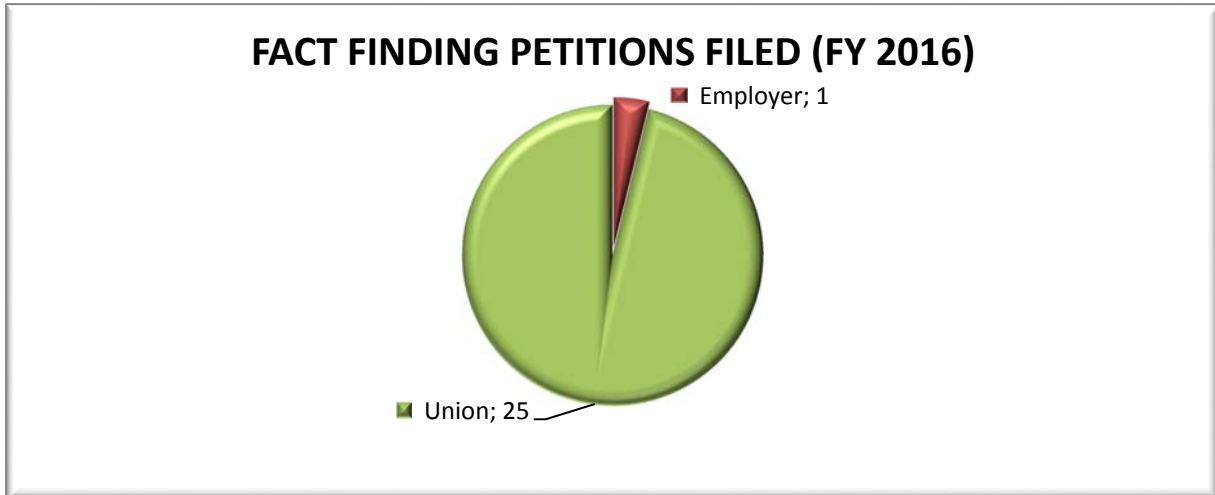
When collective bargaining and mediation assistance do not result in a complete final labor agreement, a party may file a petition for fact finding, or, if eligible, compulsory arbitration (Act 312). A "neutral" fact finder or Act 312 arbitrator is appointed by the Commission to conduct hearings and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

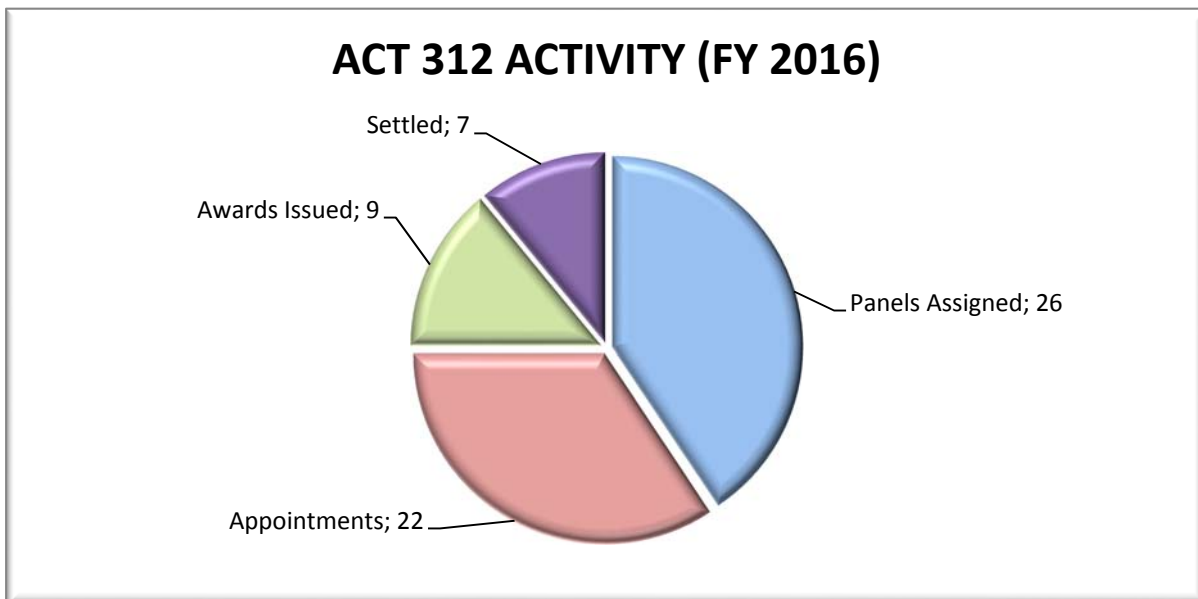
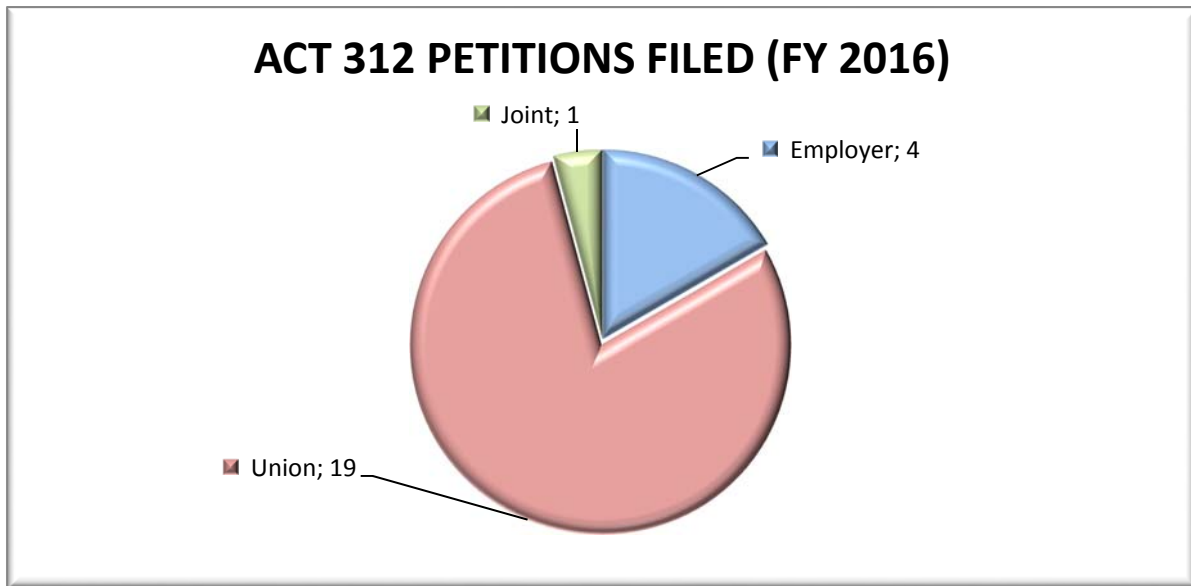
Fact finding activity during FY 2016 included:



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 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 2016 is as follows:

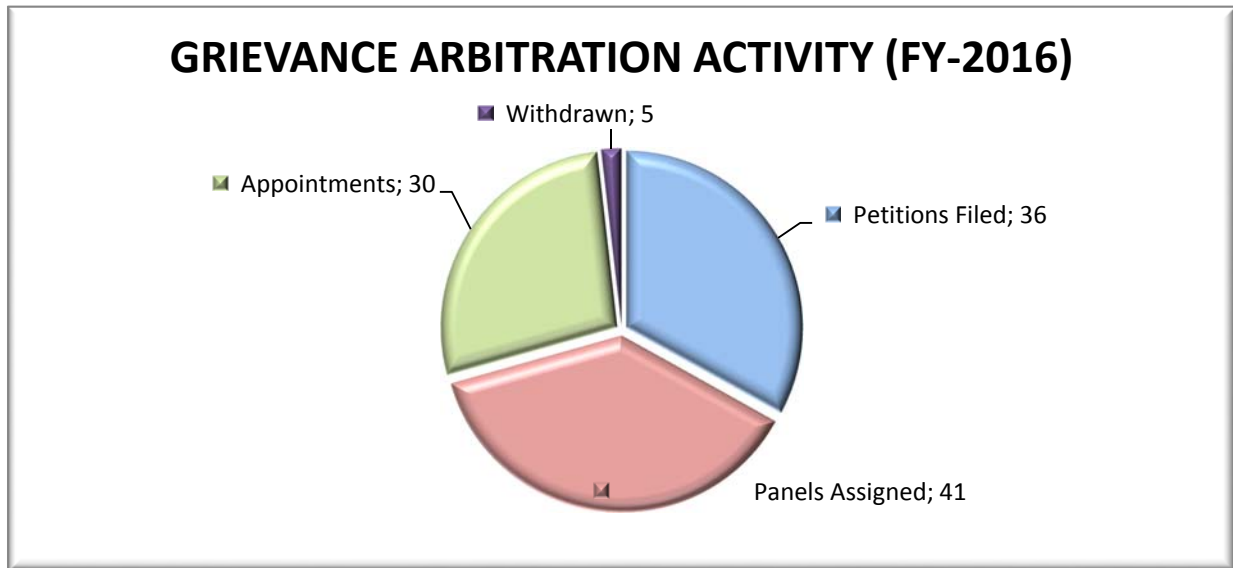


GRIEVANCE ARBITRATION

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 2016 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 assigned identifying number.

During FY 2016, the Commission received 450 union audits. The posted audits and information for registering to file an audit are available on the Commission's website.

FY 2016 TRAINING AND EDUCATION

MERC BASICS

MERC/BER first presented a very 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 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.

During FY 2016, the *MERC Basics* program was presented at the following Michigan locations:

- Detroit - MEA bargaining and public relations conference at COBO Center – This presentation was offered to officers and members of the Michigan Education Association.
- Muskegon – Hosted by the Muskegon Intermediate School District, this presentation was open to area labor and management representatives. The audience included public and private sector union representatives, management representatives, bargaining team members and attorneys.
- Kalamazoo – Hosted by the Kalamazoo Area Labor Management Committee. This offering attracted union and management labor relations practitioners from across the Kalamazoo area.

MERC-NLRB Joint Program

On September 23, 2016, a variation of the *MERC Basics* program was presented at the Library of Michigan and Michigan Historical Center. Titled *MERC-NLRB—the Basics*, MERC mediators initiated and coordinated the session. The MERC mediators worked in partnership with representatives of the National Labor Relations Board and the Federal Mediation and Conciliation Service to offer a presentation highlighting the similarities and differences between the respective state and federal agencies and their processes and procedures. Over 135 people registered to attend the program. MERC continues to seek out venues for Basics training as part of its mission to engage in education and training.

TRAINING PRESENTATIONS AND OUTREACH

Training Presentations

Education and training are important components of the mission of MERC/BER. The following training programs and presentations were conducted during FY 2016:

- October 23, 2015 Presentation at MNA Conference
- November 5, 2015 Public Sector Basics presentation to American Bar Association
- November 12, 2015 Mediation presentation to Wayne State University Labor Law class
- January 8, 2016 IBB Training, Grand Rapids Community College
- January 23, 2016 Unfair Labor Practice presentation at American Bar Association
- February 5, 2016 MERC Basics presentation at MEA Conference
- February 18, 2016 MERC Basics presentation at Muskegon Intermediate Sch District
- February 2016 UAW Representative Training (multiple days)
- March 2016 UAW Representative Training (multiple days)
- April 14, 2016 MERC Decisions presentation at Institute for Continuing Education
- May 9, 2016 Student Collective Bargaining program at Muskegon Community College
- May 18, 2016 MERC Basics presentation at City of Kalamazoo
- September 23, 2016 MERC/NLRB/FMCS Basics at Library of Michigan

Outreach and participation in Collective Bargaining training exercises were provided to:

- Grand Valley State University, labor law class. A MERC mediator served as the arbitrator in a mock grievance arbitration, providing first-hand experience in the arbitration process to labor law students.
- Muskegon Area Labor/Management Committee, student collective bargaining program. MERC mediators attended the program and provided mediation expertise to the area's high school student participants.

Internal Staff Development

As noted, a component of the mission of the Bureau of Employment Relations is education and training; this includes the external training noted above, but it also includes internal training.

Arranged and organized with great attention to detail by BER Paralegal Ashley Olszewski, a training session was conducted in early October of 2015 among the entire Bureau staff. The combined training/retreat was conducted over a 2-day period and offered opportunities for discussion on strategic and succession planning. Also, on the agenda was an in-depth review and discussion on the nuances of recently-issued MERC cases on statutory interpretation and/or matters of first impression. Bureau staff also participated in sessions delivered by Michigan Department of Civil Service trainers that focused on valuing differences in the work environment

and on inter-generational appreciation - both timely and important topics, further fostering the positive working environment that exists among BER employees.

Michigan Minimum Wage Training

The BER Director and Mediation Supervisor attended a two-day program designed for Wage and Hour Division staff that included training on that agency’s recently-updated minimum wage manual. The training also included sessions devoted to changes in the law and provided guidance on all aspects of wage claims handling with particular emphasis on the impact and application of the Michigan Workforce Opportunity Wage Act of 2014 (PA 138).

OTHER FY 2016 HIGHLIGHTS

BUDGET

The authorized and available appropriation for the Bureau of Employment Relations during the 2016 fiscal year was \$4,117,800. 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 12 Months of Record Close; Consent Elections conducted within 65 Days of Filing Petition; and Mediated Labor Contract Disputes Closed without an Act 312 Award or Fact Finding Report. The following chart represents the overall average of BER’s Dashboard performance during the 12 months in FY 2016.

MiScorecard Performance							
Agency: Employment Relations				Legend:			
Director Ruthanne Okun				Green 90% or greater of target			
Period: FY 2016				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	Green	↑	90%	98.9%	91.3%	Annual	% Issued within 12 Months of Record Close
				90 of 91	84 of 92		
Conduct Consent Elections	Green	↑	80%	84.7%	82.8%	Annual	% Held within 65 Days of Filing Petition
				83 of 98	63 of 76		
Mediate Labor Contract Disputes	Green	↑	80%	93.0%	90.8%	Annual	% Contract Negotiations Closed w/o 312 Award or Fact Finding Report
				160 of 172	239 of 263		

For FY 2017, BER has revised its “Issuance of Orders” target. It will now measure the percentage of Orders issued within 9 months of record closure instead of the 12 month target utilized in FY 2016.

PRIORITIES

During FY 2016 the Bureau of Employment Relations established the following top three priorities to achieve in FY 2017:

- Draft and implement rules to administer the recently-passed legislation, PA 194 of 2016, regarding public school employee strikes and employer lockouts.
- Implementation of a new case management system to replace our ORACLE system.
- Succession planning to address the potential retirement of 75% of our staff within the next 5 years.

RULE AMENDMENTS

In late FY 2016, the Commission submitted draft amendments to its General Rules to reflect changes in the law that have occurred as a result of the enactment of 2016 PA 194, a law that took effect on September 19, 2016. 2016 PA 194 amended the Public Employment Relations Act (PERA) to revise the process for handling teacher strikes and lockouts in order to provide a more effective and efficient means for addressing these violations of PERA. The draft revisions to the Commission’s General Rules have been posted on MERC’s website under the “What’s New” link and were submitted to the Office of Regulatory Reinvention for review and to continue the rulemaking process.

EMPLOYEE ENGAGEMENT

In the past several years, every employee in the Bureau of Employment Relations has completed the Employee Engagement Survey conducted by Price Waterhouse Cooper (PwC) and administered to all State of Michigan employees. Employee engagement is the strong and positive connection between a person and his or her job. The survey was designed to assist in ensuring “a customer-focused government and a work culture in which employees are highly engaged, respected, and valued and have the opportunity to freely express 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. Ensuring high employee engagement is an essential component of the Governor’s reinvention of state government.

As noted in the previous Annual Report, the Bureau of Employment Relations scored the highest of all agencies in its parent department – the Department of Licensing & Regulatory Affairs - in the survey that was designed to measure the level of engagement of State employees in their job. The Bureau’s total composite employee engagement score was 4.45 (on a scale of 5). Also, 100% of all employees at BER responded that they understand how their jobs contribute to the

mission of the State of Michigan and, further, that they have a clear idea of their job responsibilities.

Even with these phenomenal scores, the Bureau submitted an Action Plan in an effort to achieve even better scores when the survey is administered next and, also, because engaging employees and responding to their concerns and suggestions just makes good sense. Targeted in the Bureau's Employee Engagement Action Plan which continues to this time, were 3 separate areas. They are:

Outdated or Lack of technology – The Bureau has been actively engaged in identifying technology issues that are hindering employees from performing their jobs to the maximum, and we will attempt to alleviate those barriers, if possible. The development of a case management tracking system to replace the current and outdated program is underway. New State issued laptop computers have been provided to BER mediation staff with home offices.

Opportunities for growth in current jobs/development/career goals – We are seeking to learn what is needed to advance both in and out of a job classification in State service and have requested guidance on how to navigate through the Civil Service job classification system. During FY 2016, the Bureau Director and Mediation Supervisor have been actively meeting with their direct reports in one-on-one sessions to highlight good work and to seek input on individual long term career goals. These discussions have focused on how the Bureau may assist in accessing opportunities for development of employees within their current position and within State government.

Awareness of Good Government initiatives –Office of Good Government (OGG) initiatives that exist within our department are now fully communicated to Bureau employees through regular emails. These are initiatives that are within OGG's purview as that office seeks to reinvent Michigan. Notably, Governor Rick Snyder created the Office of Good Government to engage employees and, ultimately, to improve government services for all Michiganders.

The goal that is set is to achieve a 3% improvement in each survey item (when the survey is administered next) and to document any potentially mitigating factors that may impede progress.

UPDATE OF MICHIGAN PUBLIC EMPLOYMENT RELATION MANUAL

The long-awaited "MPELRA Manual" has been released and is available through the Michigan Public Employer Labor Relations Association. MERC/BER/MAHS staff authored several significant articles in the manual, which may be accessed via the MPELRA website at MPELRA.org.

UPDATED FTW FAQs

In FY 2016, MERC updated its Freedom to Work (FTW) Frequently Asked Questions (FAQs) in order to accurately reflect recent Commission decisions interpreting Michigan's FTW laws. Generally, the FTW laws prohibit union-security agreements, which require that private and/or public employees pay union dues or a service fee as a condition of obtaining or continuing employment. Employees who choose to opt-out of the union, however, are still afforded rights and benefits as members of the bargaining unit.

The updated FAQs are posted on MERC's website under the "Freedom to Work" link.

DETROIT PRE-BANKRUPTCY CASES

As noted above, at the close of the bankruptcy process, MERC was holding in abeyance sixty-seven (67) cases involving the City of Detroit which had been filed prior to or during the City's bankruptcy, mostly unfair labor practice charges. This agency seeks to handle and/or close (if appropriate) these cases as quickly as possible, especially where the underlying dispute may be moot and/or ripe for voluntary resolution or dismissal. In April 2015, MERC was authorized to resume processing those cases, many of which had become moot in the interim. Labor Mediators sought out opportunities for voluntary withdrawal or voluntary settlement, ALJs re-activated cases which had been suspended mid-way through adjudication, and MERC legal staff initiated action on those cases for which exceptions sought (appeals) had been stayed. While these efforts continue, the overall number of pending cases involving the City of Detroit had been reduced from sixty-seven (67) to twenty-three (23) by the end of FY 2016.

MERC/BER ACCOMPLISHMENTS

Several significant accomplishments were achieved during FY 2016:

- At the MERC meeting on May 10, 2016, the Commission adopted templates for use on future Act 312 Awards and Fact Finding Reports. Creation of the templates was the vision of MERC Chair Edward Callaghan, who worked with a committee of labor mediators (Micki Czerniak, Tom Kreis and Sidney McBride) in furtherance of this goal. The committee consulted with representatives from two advisory committees comprised of MERC's panel members (312 Arbitrators and Fact Finders) and advocates in the labor relations community. The thought of the Commission was to create templates that would provide a standardized format for decision makers (panel chairs) to follow when developing their awards or reports. Such consistency would greatly assist parties and constituents to better understand the content and reasoning behind each issue addressed in an award or report. The standardized format will also help guide the reader through the award or report. All awards and reports issued after October 1, 2016 must follow the template formats which are available under the forms link on MERC's webpage.
- MERC is pleased to announce that the Commission docket is current and up to date. The issuance of numerous MERC Decisions continue to clear out a series of complex cases and unfair labor practice charges resulting from issues of first impression relating to significant changes in Michigan labor law since 2011.
- Grievance mediation continues to be promoted, and the labor relations community is responding. Grievance mediation has grown to represent virtually half of the labor disputes brought to MERC for resolution. The success rate in resolving grievances through mediation continues to be near 90%.
- A seamless transition of Wage and Hour Division from MIOSHA to BER resulted in operational efficiencies within our parent department LARA. BER managers assumed

supervisory responsibility over the Wage and Hour Division at a time when several key issues within the jurisdiction of Wage and Hour were in need of resolution.

- The LARA Director recognized a team of BER staff who did an exemplary job of working to develop the system to replace the outdated ORACLE database system at BER. Each of the members of the team were awarded the Office of Good Government Recognition Coin for Teamwork. MERC congratulates Sidney McBride, Denise Hinneburg, Deborah Stewart, Barbara Norris, and Nancy Pitt on their well-deserved recognition.

MERC WEBSITE & RESOURCE MATERIALS

The following materials and information are 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, Polices 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

At the suggestion of persons on MERC’s Advisory Committee, we have sought diligently to improve the ease with which Commission decisions may be searched. Constituents once again 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 new 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 hope this feature will prove very useful for our constituents, especially those who may be unfamiliar with the work performed by MERC/BER.

MERC decisions are also now available through 2015 on the Governing Michigan web site, compliments of the Library of Michigan. We anticipate that MERC decisions issued in 2016 will be available on Governing Michigan in the first quarter of 2017. Thanks are due to Ms. Bernadette Bartlett, the Library's Documents Librarian, who has made this endeavor possible.

MERC/BER CONTACT INFORMATION

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

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