

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FISCAL YEAR 2015 ANNUAL REPORT
(October 1, 2014 thru September 30, 2015)



Prepared by Bureau of Employment Relations Staff
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INTRODUCTION

MESSAGE FROM THE COMMISSION CHAIR

This fiscal year hallmarked the 50th anniversary of the adoption of the Public Employment Relations Act (PERA), which was signed by Governor George Romney on July 22, 1965. For a half-century, the PERA 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 training for MERC arbitrators and fact finders on a full range of issues, along with various initiatives offered to labor and management representatives on MERC Basics, rule revisions and collective bargaining trends.

The growing trend of public sector employers now faced with deficit fund balances and the application of PA 436 has resulted in new and uncharted areas of Commission activity. Examples of recent changes are seen with the City of Detroit Bankruptcy and County of Wayne Consent Agreement which challenged the impacted parties to resolve their differences in a non-traditional but professional manner. Mediation services offered by this agency were pivotal in maintaining employment stability and assisting the respective parties to reach voluntary resolution in these two large municipal governments.

Under the capable leadership of Bureau Director Ruthanne Okun, Bureau staff continues to diligently aid the Commission in resolving various disputes filed in the agency's mediation and labor relations divisions. This report provides Dashboard metrics that clearly indicate successful accomplishment of key objectives that serve as a catalyst for positive change in fostering cooperative labor-management relations. Moreover, Bureau staff employee engagement scores are among the highest within state government – a reflection of the ability of BER staff to work together to accomplish the agency's mission and goals.

Also noteworthy is the collaboration between the Bureau and the Library of Michigan that is currently digitizing a body of MERC decisions dating back to 1965. Those digitized decisions are now accessible via a link on MERC's website.

As FY 2016 commences, MERC/BER will continue to approach existing and new challenges with a renewed 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

Edward D. Callaghan was appointed as Chair of the Michigan Employment Relations Commission on June 20, 2011 and reappointed on June 6, 2014. 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. Chair 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 Commission.

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, 2017.

Robert S. LaBrant was appointed to the Commission on July 1, 2012 and reappointed in June 2015. 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 Vietnam.

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, 2018.

Natalie Yaw was appointed to the Commission in June of 2013. Commissioner Yaw is a partner at The Erskine Law Group in Rochester, where she represents large commercial clients in litigation matters. Previously, she was an attorney at Dickinson Wright, PLLC before joining Citizens Financial Group, Inc. as Vice President and Senior Counsel. She also serves as Vice Chancellor for the Episcopal Diocese of Michigan.

Commissioner Yaw has a bachelor's degree from Rice University and Juris Doctorate (*summa cum laude*) from Michigan State University College of Law. Her term expires June 30, 2016.

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, 1960-2015:

- 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

PERA 50TH ANNIVERSARY

On July 21, 2015, the Michigan Employment Relations Commission and the Bureau of Employment Relations hosted a reception celebrating the 50th Anniversary of the signing of the Public Employment Relations Act, on July 23, 1965, by then Governor George Romney, pictured here at the signing ceremony.



The MERC/BER reception recognizing the 50th anniversary of the signing of PERA was a wonderfully successful event with over 100 in attendance, including representatives of management, labor, neutrals and other State of Michigan staff. Among the highlights, in addition to the people, was the “MERC Museum” assembled by BER staff that featured original artifacts and documents, as well as, numerous photographs of past and present MERC/BER staff and constituents.

In addition to the memorabilia, a PERA timeline was placed on the wall of the “MERC Museum” where attendees signed their names as a keepsake to commemorate this momentous occasion. For the most part, the museum afforded everyone an opportunity to reconnect with memories of the various events that have shaped labor relations in Michigan and to remember interesting times with friends and adversaries alike.

Comments were shared by notable presenters recognizing the events leading up to the passage of PERA and the experiences of the labor relations community under PERA, including by:

- Edward Callaghan, Chairperson of MERC
- Mike Zimmer, Director of the Department of Licensing and Regulatory Affairs
- Ruthanne Okun, Director, BER
- John Runyan, on behalf of the late Ted Sachs, who was a pivotal participant in the passage of PERA
- Keith Nelson, presenting sentiments on behalf of Congressman Sander Levin

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 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 between 1971 and 2014:

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

Staff Biographies

Ruthanne Okun, BER Director has been in the field of labor and employment relations for the past 34 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.

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.

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 worked for the State of Michigan for over 42 years exclusively within the Department of Labor under its various names, which ultimately became the Department of Licensing and Regulatory Affairs (LARA). Ms. Kennedy received several promotions and worked at four different levels within the Civil Service System. Milli Kennedy retired from her position as the Mediation Secretary in Lansing on August 28, 2015.

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.

Lisa Lane served as an Administrative Law Specialist, handling Freedom to Work issues and responding to FTW inquiries from individuals, employers, labor representatives, legislators and others until she left State service on October 21, 2014.

Azania (Tené) Logan joined the BER staff during FY 2015 as the LARA Employee Engagement Specialist. Tene left State service on August 28, 2015.

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. Tracy currently holds the position of Mediation Secretary in the Lansing BER office.

Wanda Mayes has been a Labor Mediator for the Bureau of Employment Relations since 2000. She is currently assigned to the Detroit Office. Her educational background includes 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. Her career 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 petitions with 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 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 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.

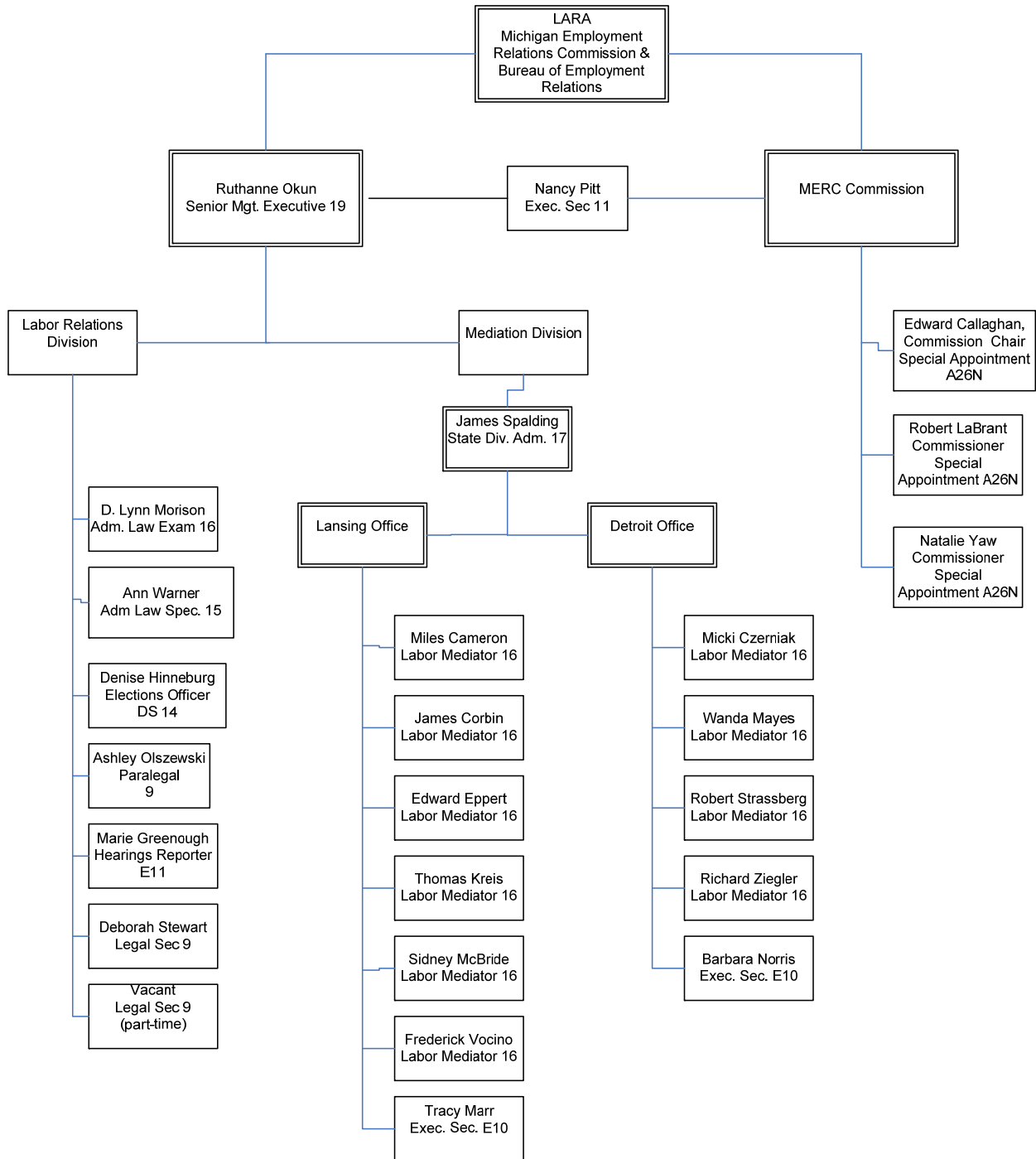
W. Ann Warner came to the Bureau of Employment Relations in October 2013 as an Administrative Law Specialist. Ann comes with a wealth of experience having served as a Law Clerk for the Honorable Anna Diggs Taylor of the U.S. District Court, as well as a staff attorney for the federal judges. She worked 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. She is a member of the Administrative Law Section and the Employment and Labor Law Section of the State Bar of Michigan.

Carl Wexel served as a Law Clerk with the Bureau of Employment Relations beginning 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 recently graduated law school at Wayne State University. Carl Wexel left BER for employment with the State of Michigan, Office of the State Employer, on December 26, 2014.

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, 2015



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.

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 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 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.

RECENT 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 such 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 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); re-defining emergency manager laws (2012 PA 436); exclusion of Act 312-eligible employees from the provisions of PA 54 (2014 PA 322); prohibition of parties from bargaining over a firefighter's choice to volunteer for or obtain paid on-call employment with another fire department (2014 PA 323); and changes to the union audit process (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 changes and continued to issue decisions during FY 2015. (See the ULP section beginning on page 22). An updated chart of these 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.

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 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 the receivership is terminated, whichever occurs first.

Emergency Manager Appointments and Consent Agreements¹

At the opening of FY 2015, five municipalities and three school districts in Michigan were experiencing a financial emergency and were operated by an Emergency Manager. An additional two municipalities and one school district were operating under a Consent Agreement and three other municipalities were in receivership with a Transition Advisory Board. Two additional local units of government were under review to determine if a financial emergency existed.

At the close of FY 2015 for MERC (9/30/2015), four municipalities and five public school districts within MERC's jurisdiction were operating under the control of an Emergency Manager or with a Consent Agreement. Notably, Wayne County entered into a Consent Agreement during FY 2015. In addition, six municipalities were operating in receivership with a Transition Advisory Board at the helm. The City of Detroit was operating under the guidance of a Financial Review Commission.

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

Deficit School Districts²

The Michigan Department of Education is required to issue quarterly reports to the legislature on school districts incurring year-end deficits and the districts' progress in reducing those deficits. The Michigan Department of Education reported 58 school districts and public school academies in deficit at the close of 2014, up from the 52 districts in deficit at the close of FY 2013. Two were public school academies which closed at the end of FY 2014.

The Department of Education final quarterly report covering FY 2015 reflected the following status of the remaining 56 deficit districts at the close of the fiscal year:

- 20 deficit districts project to have eliminated their deficit by June 30, 2015, subject to final audit;
- 20 districts project a reduced deficit;
- 14 districts project an increased deficit;
- Two deficit districts were converted to public school academy systems.

Also, two districts that began FY 2015 with a positive fund balance project ending the fiscal year in deficit.

Early Warning Legislation³

The Department of Education Quarterly Report also addressed the effect of early warning legislation that became effective during FY 2015, with the following synopsis:

“Legislation to address districts and PSAs that trigger “early warning” indicators of financial stress was signed by Governor Snyder on June 17, 2015. The legislation is intended to allow school districts to receive assistance from their Intermediate School District and the Department of Treasury prior to facing a financial emergency.

“The legislation expands the role of the Department of Treasury including oversight of districts that have been in deficit, or project to be in deficit, for more than five years. Those districts will be required to submit an Enhanced Deficit Elimination plan (EDEP) to Treasury. Of the 38 districts that have projected to be in deficit at June 30, 2015, 16 would fall under Treasury’s oversight. Our interpretation of the legislation indicates that the following districts would transition to Treasury under this legislation:

- Benton Harbor Area Schools*
- Bridgeport Spaulding Community School District*
- Clintondale Community Schools*
- Detroit City School District*
- Flint Community Schools*
- Hazel Park City School District*

² State of Michigan, Department of Education Quarterly Report to the Legislature on Deficit Districts, September 11, 2014 and September 16, 2015.

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

- Highland Park City Schools*
- Lincoln Consolidated Schools*
- Mackinaw City Public Schools*
- Mt. Clemens Community School District*
- Muskegon Heights School District*
- New Haven Community Schools*
- Pontiac City School District*
- Southgate Community School District*
- Vanderbilt Area Schools*
- Westwood Community Schools*

(It is important to note that the MDE Quarterly Report is based upon projections subject to change as audits are completed).

Collective bargaining in deficit school districts continued to be difficult, especially with districts now facing enhanced financial reporting requirements due to the early warning legislation referenced above. While there has been some limited improvement in negotiated wage increases, it is not uncommon for those modest increases to be offset by increased employee cost for health care and a continuation of frozen step movement. Bureau mediation staff continues to face complex and difficult circumstances in many public schools as mediators strive to assist in reaching settlements. The mediation supervisor met with officials within the Michigan Department of Education to discuss the mediation services of BER and to extend an offer to assist with early mediation where appropriate and desired by the parties.

The most recent Department of Treasury Emergency Manager Information Report and the Department of Education Deficit School District Report are submitted to the Michigan Employment Relations Commission for review at each regular meeting of the Commission.

Municipal Finance & 2012 PA 436

During FY 2015, two of Michigan's largest municipal employers utilized MERC services as part of the means of handling their large deficit budgets. In each situation, the respective parties were faced with having to adopt new strategies of collective bargaining (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 with the State. Below is a brief comparison and contrast of MERC's involvement and some of the bargaining processes used under those different but related provisions of 2012 PA 436.

Detroit's EM & Bankruptcy

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. Act 312 had long been viewed as an extension of PERA; however, others opined 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 were permitted to utilize MERC's labor mediation and fact finding processes. This exception was likely chosen rather than risk the loss of federal funds provided to the City's transportation department had the EM unilaterally applied the City Employment Terms (CETs) that had been imposed on other employee groups.

At the close of the bankruptcy process, approximately sixty (60) cases were pending at MERC involving the City, mostly unfair labor practice charges. This agency seeks to dispose of these cases as quickly as possible, especially where the underlying dispute may be moot and/or ripe for voluntary resolution or dismissal.

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 on a comprehensive Consent Agreement. This process differs from using an EM by allowing 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. This approach also allows the negotiated CBAs to be honored by the parties and not subject to unilateral change, notwithstanding the employer's discretion to subsequently suspend the collective bargaining process.

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 close of FY 2015, the County had successfully ratified collective bargaining agreements with all but one of its represented employee groups.

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.

MERC PROCESSES

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 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. It is also used 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 classification established after a unit has been certified.

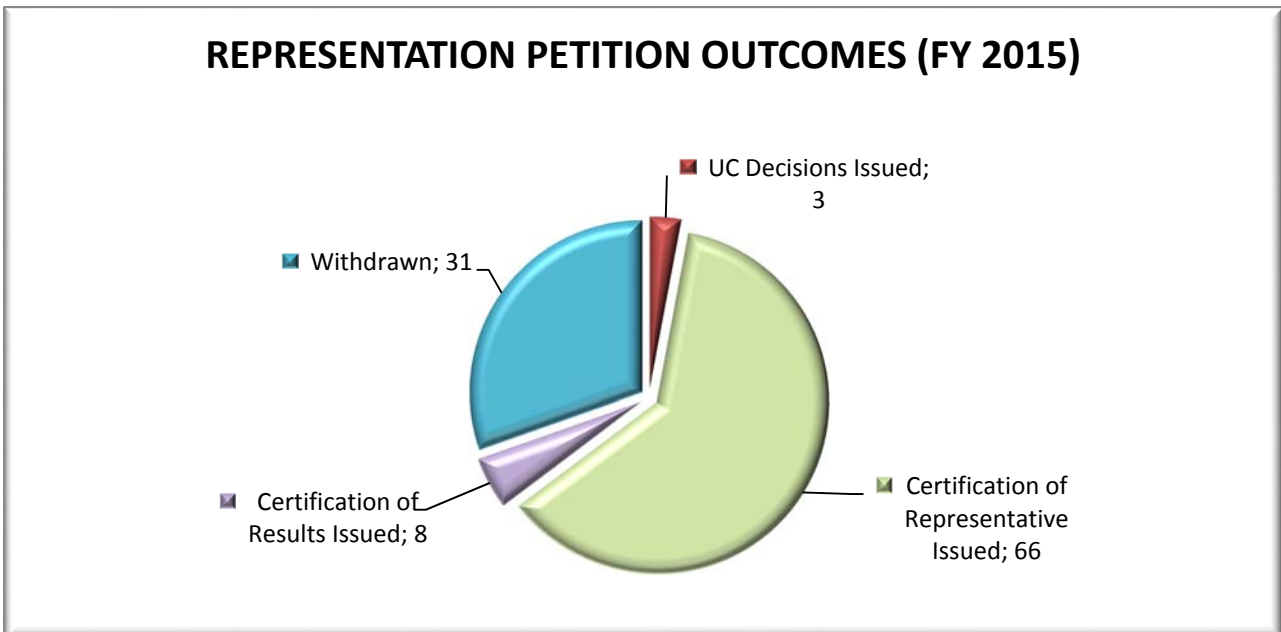
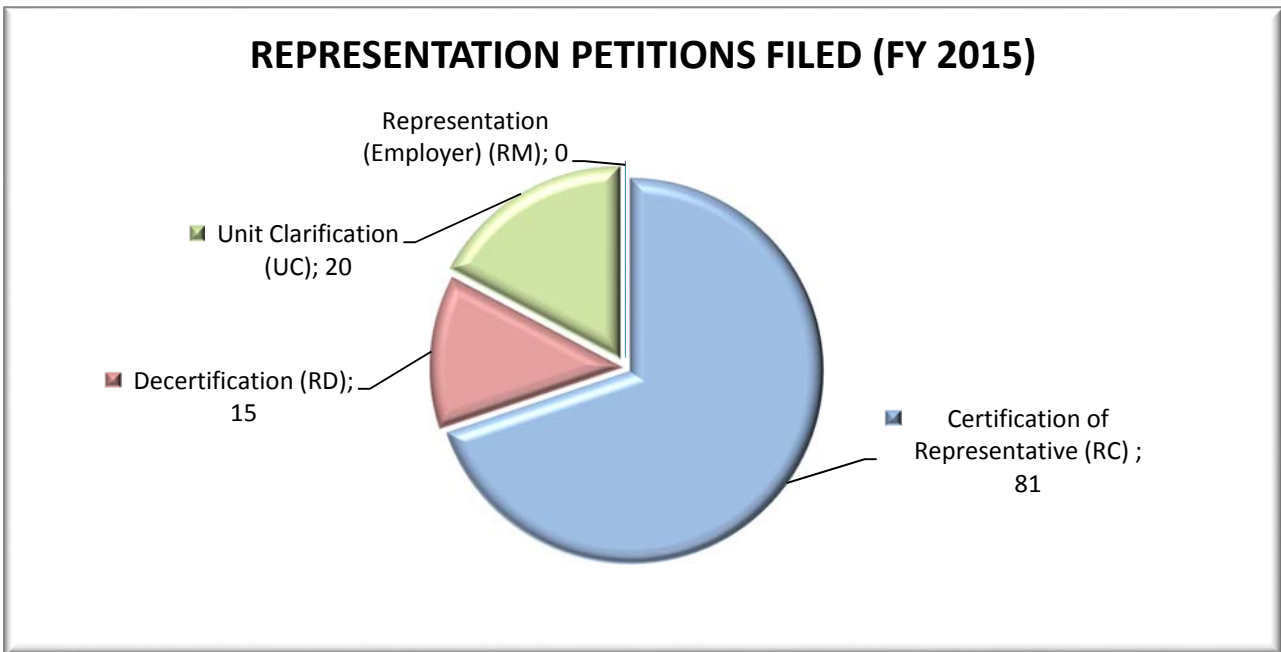
Consent Elections or Commission Directed Elections

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. 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 2015, the following election activity occurred:



UNFAIR LABOR PRACTICES – FY 2015

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 2015, 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 2014, the Commission received several charges regarding the impact of various legislative amendments enacted since 2011. In FY 2015, the Commission resolved several unfair labor practice charges that involved the impact of 2011 PA 54 (restrictions on pay and benefit increases to employees after contract expiration); 2011 PA 103 (expansion of the prohibited subjects of bargaining for public school employers and the labor organizations representing public school employees subject to the Teacher Tenure Act); 2011 PA 152 (limits on employer contributions to employee health care costs); and 2012 PA 349 (Freedom to Work for public sector employees).

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 in place. Act 54 also requires public employers to pass on increases in the costs of insurance benefits to employees during the period between contract expiration and the effective date of a successor agreement.

In FY 2015, the Michigan Supreme Court denied the Charging Party's application for leave to appeal the Court of Appeals affirmance of the Commission's decision in *Bedford Pub Sch*, 26 MPER 35 (2012), which held that the prohibition against increasing wages and benefits after contract expiration applies to pay increases based on educational achievements by employees. The Commission further considered the application of Act 54 in *Schoolcraft County and the Schoolcraft County Sheriff*, Case No. C12 L-234, issued November 24, 2014. In that case, the Commission clarified the applicability of the provision of Act 54 that requires public employers to pass on increases in the cost of insurance benefits to employees during the period between contract expiration and the effective date of a successor agreement. The Commission explained that the provision only applies to insurance benefits and does not apply to the cost of pension benefits.

The Commission also issued several decisions interpreting 2011 PA 103, which prohibits public school employers and the unions representing employees subject to the Teacher Tenure Act from bargaining over decisions regarding teacher placement, layoffs, recalls and certain other matters, including: *Ionia Public Schools – and Ionia Education Association, MEA/NEA*, Case Nos: C12 E-094 & CU12 C-013, issued December 18, 2014; *Pontiac Education Association, MEA/NEA-and-Pontiac School District*, Case No. CU12 J-047, issued December 18, 2014; *Pontiac School District –and- Pontiac Education Association*, Case Nos. C11 K-197 & CU12 D-019, issued October 16, 2014. All MERC cases and summaries of those cases may be found on the agency’s web-site at www.michigan.gov/merc.

2011 PA 152 was enacted to limit public employers' expenditures on employee medical benefit plans and provides public school employers with two choices in determining the manner in which health care costs will be shared between the employer and the employees – a “hard cap” which limits the employer to paying a fixed dollar amount per employee based on the type of plan the employee selects, or the eighty percent employer share. In *Decatur Pub Sch*, 27 MPER 41 (2014), the Commission indicated that a public employer’s choice between the “hard cap” and the eighty percent employer share is a permissive subject of bargaining. The Commission further held that even if the employer and the employees’ union have not reached agreement or impasse, a public employer may implement its choice of options under Act 152 at the deadline set by Act 152 without violating its duty to bargain.

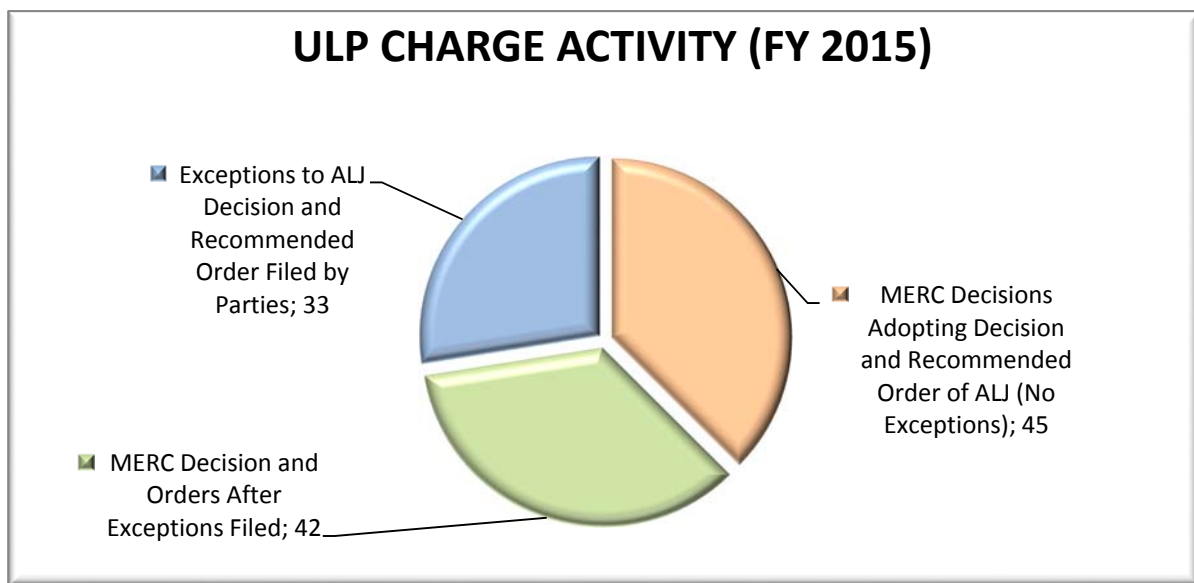
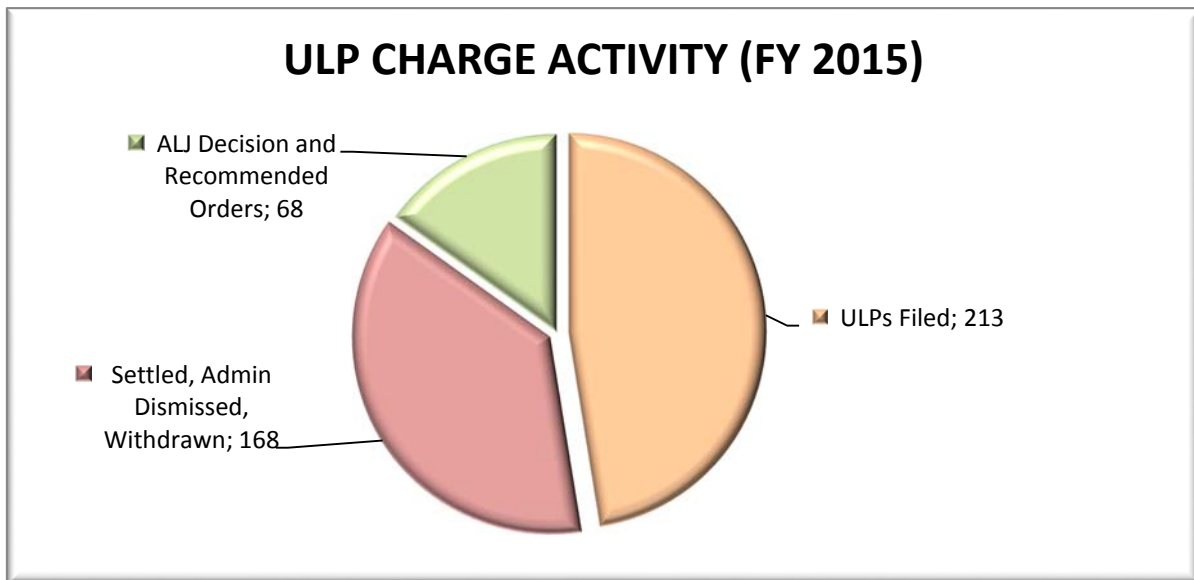
In FY 2015, the Michigan Court of Appeals upheld the Commission’s decisions in *Decatur Public Schools –and- Van Buren County Education Association –and- Decatur Educational Support Personnel Association* MERC Case Nos. C12 F-123 & 124; 27 MPER 41, issued January 21, 2014 Court of Appeals No. 320272; __ MPER __, issued March 17, 2015

The Commission also issued several decisions interpreting Act 152 during fiscal year 2015:

Board of Education of the Capac Community Schools –and- Capac Education Association, Case No. C13 C-038, issued July 28, 2015; *Garden City Public Schools –and- Garden City Education Association, MEA/NEA*, Case No. C13 K-180, issued February 11, 2015; *Traverse Bay Intermediate School District-and-Traverse Bay Area Intermediate School District Educational Support Personnel Association, MEA/NEA*, Case No. C12 G-130, issued December 18, 2014; *City of Southfield-and-Southfield Police Officers Association, et al.*, Case Nos. C11 L-220, 223, 224 and 225, issued November 18, 2014; *West Iron County Public Schools –and- West Iron County Educational Support Personnel Association*, Case No. C12 F-115, issued November 21, 2014; *Watersmeet Township School District-and-Watersmeet Educational Support Personnel Association*, MEA/NEA, Case No. C13 B-020, issued October 8, 2014

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

ULP activity at MERC during FY 2015 was:



FREEDOM 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 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 the 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.

Statutory Construction of FTW by MERC

During FY 2015, the Commission reviewed 2 cases involving the application of 2012 PA 349:

Saginaw Education Association –and- Michigan Education Association –and- Kathy Eady-Miskiewicz –and- Matt Knapp –and- Jason LaPorte –and- Susan Romska, Case Nos. CU13 I-054, CU13 I-055, CU13 I-056, CU13 I-057, CU13 I-058, CU13 I-059, CU13 I-060, CU13 I-061, issued September 23, 2015;

Taylor School District -and- Taylor Federation of Teachers, AFT, Local 1085 -and- Nancy Rhatigan, Rebecca Metz and Angela Steffke, Case Nos. C13 G-133 & CU13 G-029, issued February 13, 2015.

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 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

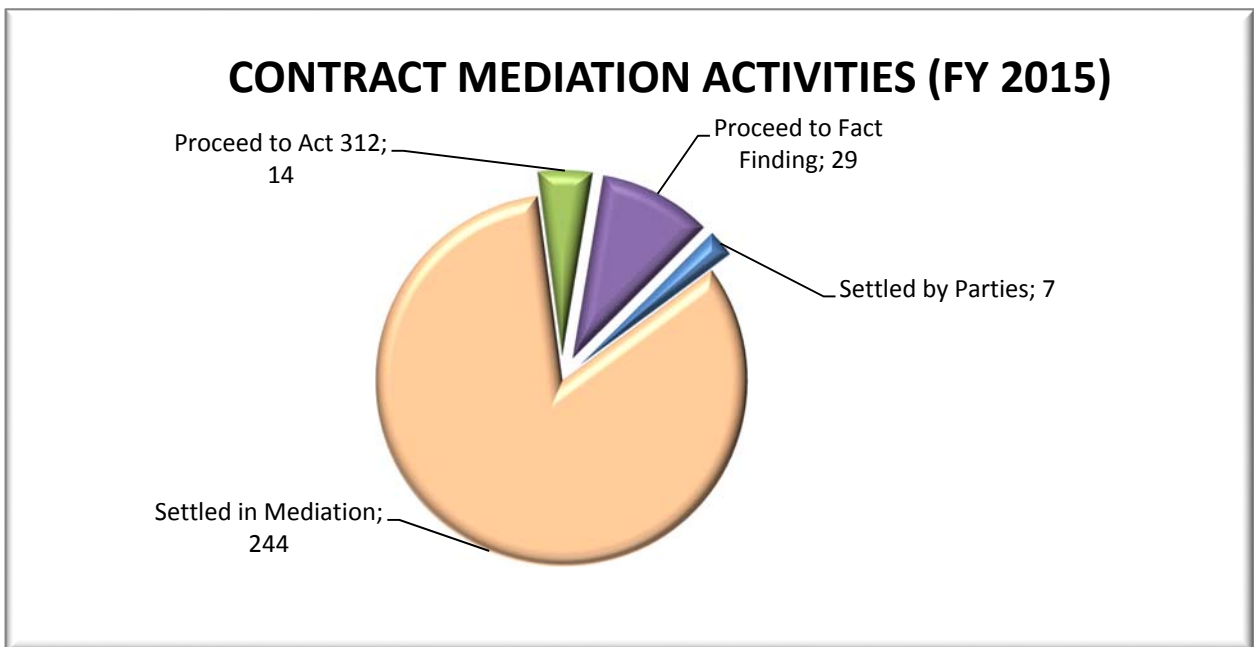
During FY 2015, the Mediation Division received and processed 1,848 Status of Negotiations notices indicating a contract open for negotiations. Mediation assistance was initiated in 297 of those negotiations resulting in 886 mediation conferences. In addition, the Mediation Division received 293 requests for mediation assistance in contract grievances. There were 299 grievance mediation conferences. Mediator involvement resulted in the settlement of 244 collective bargaining agreements and 280 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 95% of grievances mediated during FY 2015 were settled in mediation, avoiding the substantial costs of arbitration in dollars and the time required to prepare and present a case in arbitration.

The close of FY 2015 saw the expiration of a significant number of collective bargaining agreements quickly settled before the effective date of Michigan’s “right to work” legislation; 2012 PA 348 (private sector) and 2012 PA 349 (public sector), both of which became effective on March 28, 2013, or the date of an existing contract expiration, whichever came later. The impact of the legislation resulted in the elimination of union security language or modification of language to remove any suggestion that an obligation to financially support a labor organization exists. This legislation came on the heels of prior legislation in 2011 (2011 PA 54) eliminating retroactivity in public sector settlements and requiring employees to bear increased health insurance costs between contract expiration and execution of a successor agreement.

In a number of instances, union bargaining teams during FY 2015 felt strong pressure to reach a settlement early to avoid unnecessary financial losses to the bargaining unit, but also to deliver a settlement meeting the expectations of bargaining unit members in order to retain dues paying membership. These challenges typically work at cross purposes and elevate the level of frustration within the union bargaining team. That elevated frustration and anxiety continue to add to the often hostile environment within which the mediation staff operates to resolve labor disputes.

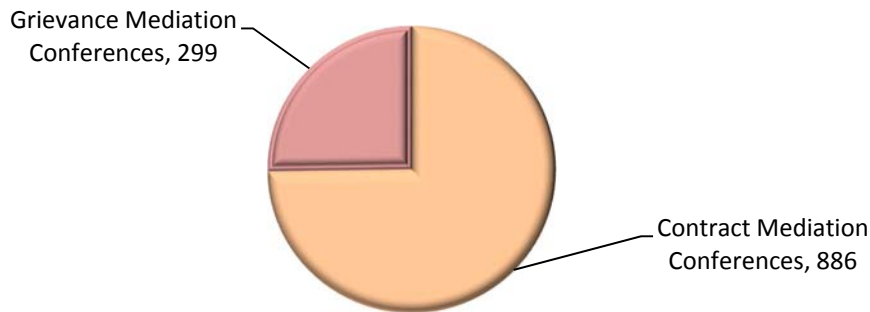
Bargaining units comprised of both Act 312 eligible and non-eligible employees presented yet another level of complexity to the collective bargaining process beginning in FY 2015. Public Act 322 of 2014, effective October 15, 2014, exempted employees eligible for Act 312 from the provisions of 2011 PA 54. This created a problematic mix within bargaining units comprised of some employees who could receive full retroactivity of negotiated increases and others who were excluded by statute from receiving retroactive wage and benefit increases. In addition, at contract expiration the Act 312 non-eligible employees are frozen on their current step in a salary schedule and are responsible for 100% of health insurance cost increases until a successor agreement is executed, while the Act 312 eligible employees are not.

The charts below set forth the Mediation Division activity during FY 2015:



As indicated in the chart below, grievance mediation is a service to BER constituents that has continued to grow in popularity and has become a significant aspect of the mediation activity within the BER Mediation Division.

MEDIATION CONFERENCES (FY 2015)



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 participates 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 attendees across the Upper Peninsula on relevant and timely topics. The Council also sponsors student collective bargaining exercises for high school seniors.

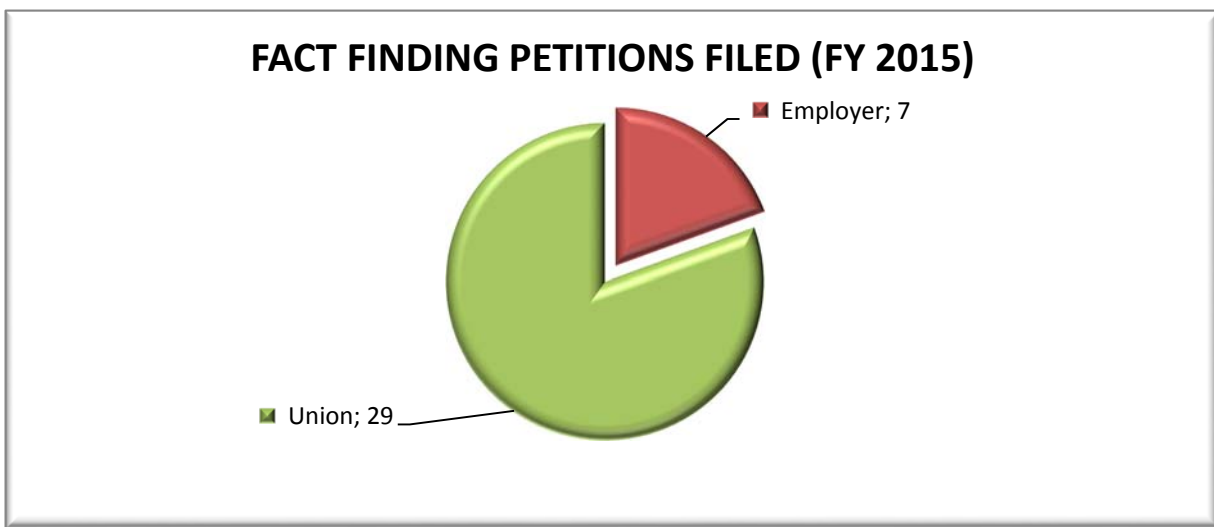
FACT FINDING & ACT 312 COMPULSORY ARBITRATION

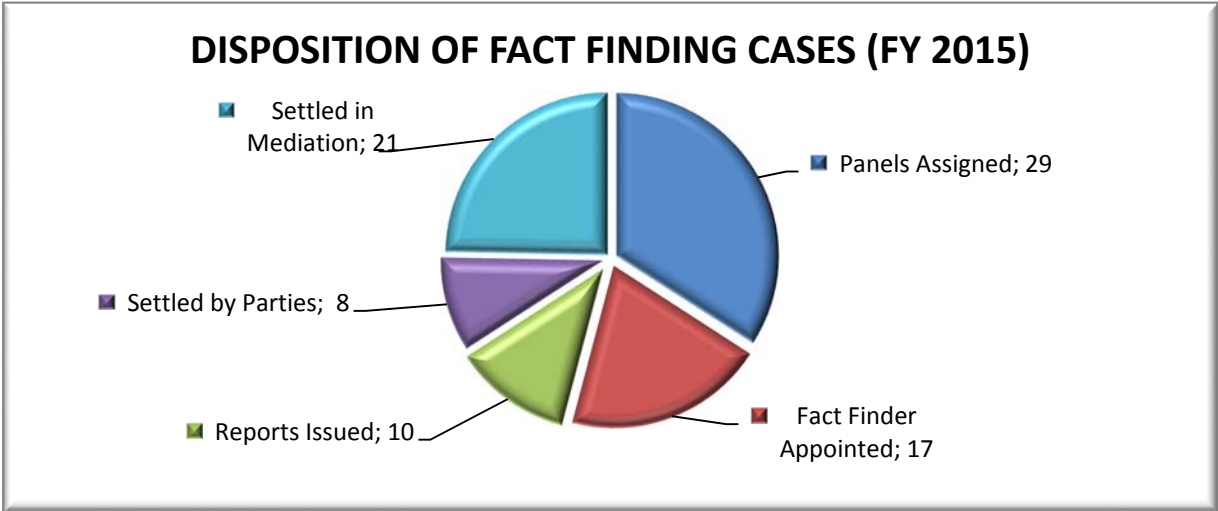
When collective bargaining and mediation assistance do not result in a complete final labor agreement, a party may file a petition for fact finding, or, if eligible, compulsory arbitration (Act 312). A “neutral” fact finder or Act 312 arbitrator is appointed by the Commission to conduct hearings and 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 2015 included:

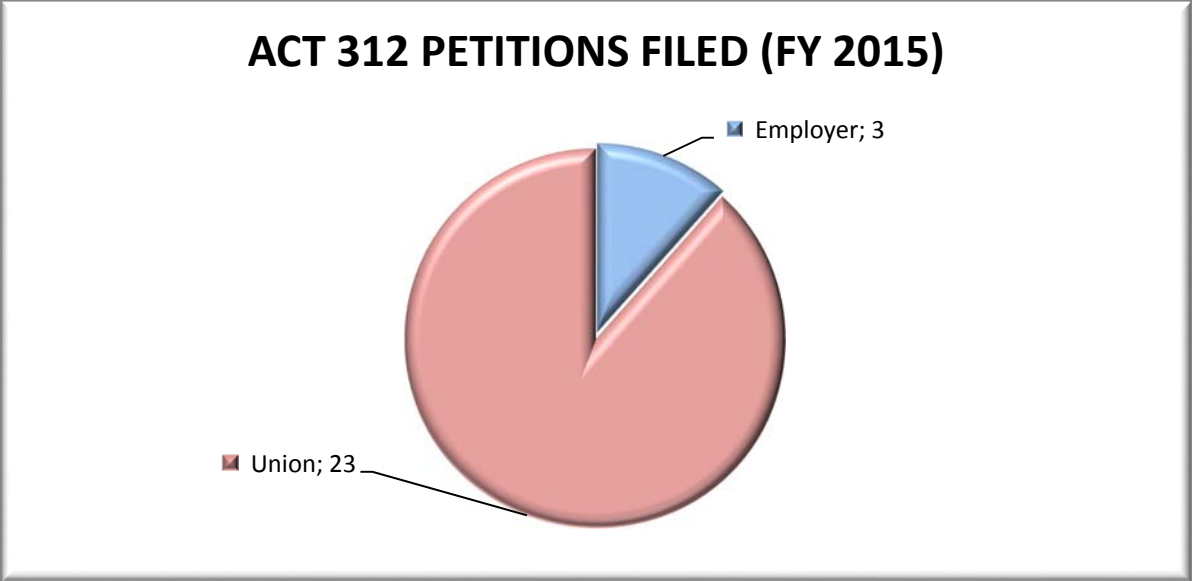




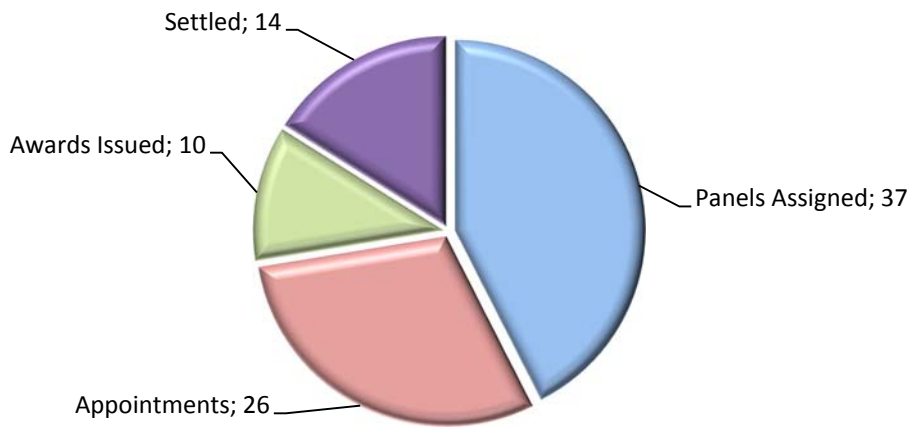
Act 312- Compulsory Arbitration for Municipal Police and Fire Departments

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 2015 included:



ACT 312 ACTIVITY (FY 2015)

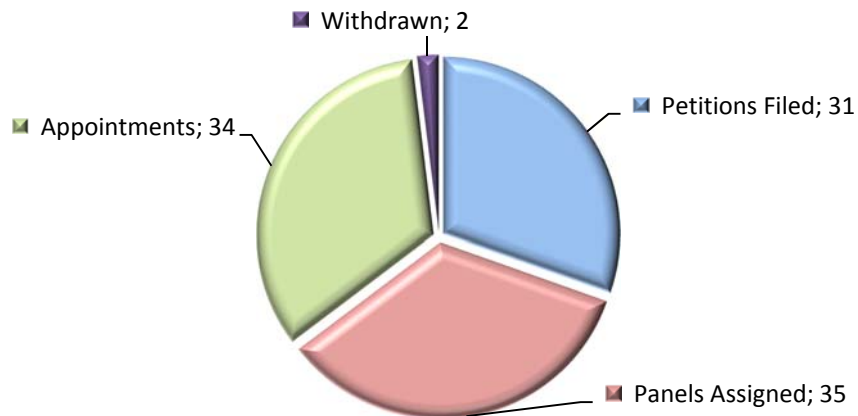


GRIEVANCE ARBITRATION

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 utilizing MERC services during FY 2015 was:

GRIEVANCE ARBITRATION ACTIVITY (FY-2015)



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 2015, the Commission received 583 union audits. The posted audits and information for registering to file an audit are available on the Commission's website.

FY 2015 TRAINING AND EDUCATION

ACT 312 ARBITRATORS AND FACT FINDERS' TRAINING PROGRAM

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. Pursuant to Section 5(3) of Act 312, the Michigan Employment Relations Commission shall establish the qualifications and training that are necessary for an individual to serve as the chair of an arbitration panel under this act.

The MERC held its most recent training of its panels of Act 312 Arbitrators and Fact Finders on March 27, 2015 at Schoolcraft College VisTaTech Center in Livonia, Michigan, with the event co-sponsored by the Michigan Department of Licensing and Regulatory Affairs (LARA) and the Michigan State University College of Law. The event was scheduled in conjunction with a MERC constituents' training program at the same location presented on March 26, 2015.

At its regular Commission meeting in August, 2014, the Commissioners determined that the Act 312/Fact Finding program scheduled for March 27, 2015 was mandatory for all panel members. Failure to attend the program would result in removal from the Act 312 and/or Fact Finding

panel for one year, unless a waiver for extenuating circumstances was granted by the Commission.

A survey of non-staff attendees resulted in highly positive reviews of the topics presented. A total of 89 individuals attended the program on March 27, 2015.

Topics covered at the 2015 Act 312 Arbitrator and Fact Finder Training Program included:

- Updates on recent MERC Decisions and Act 312 and General Rules amendments presented by Bureau staff
- School Finance presentation by the Michigan Department of Education, Office of State Aide and School Finance
- Municipal Finance presentation by the Michigan Department of Treasury and a former Emergency Manager
- Pension Trends presentation by the Municipal Employee Retirement System
- Health Insurance Impact of the Affordable Care Act presentation by Blue Cross / Blue Shield of Michigan
- Segment on considerations in crafting a Fact Finding Recommendation for Settlement presented by MERC Labor Mediators with a MERC Arbitrator/Fact Finder.

There was also discussion on the nuances of issuing an Act 312 Award when an Emergency Manager has been appointed. Materials from the program are available on the MERC website at www.michigan.gov/merc.

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 Detroit Metro Bureau. The program focused on the basics of labor relations in public sector collective bargaining in Michigan and the services available through the 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 could 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 2015, 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 with approximately 60 people in attendance at the session.
- Marquette – Held at Northern Michigan University, this presentation was open to area labor and management representatives. The audience of approximately 25 included union representatives, management representatives, bargaining team members, attorneys and city managers.
- Gaylord – Held at the Alpine Lodge. With over 50 people in attendance, this offering attracted union and management labor relations practitioners from across the northern section of Michigan’s Lower Peninsula.
- Detroit – Held at the offices of AFSCME, Council 25, for local staff representatives.

These presentations consistently received highly positive reviews and additional presentations are tentatively being scheduled in the western Lower Peninsula and the far western Upper Peninsula.

TRAINING PRESENTATIONS AND OUTREACH

Training Presentations

Education and training are important components of the mission of MERC/BER. In addition to those covered previously, the following training programs and presentations were conducted during FY 2015:

- February 11, 2015: A presentation to the Fraternal Order of Police in Lansing on recent MERC Decisions, the mediation process and contract settlement trends.
- March 26, 2015: MERC Constituent training at the Schoolcraft College VisTaTech Center in Livonia.
- April 7, 2015: Training presentation to staff at Grand Rapids Community College on the principles and process of Interest Based negotiations.
- April 15, 2015: Presentation to SEIU Healthcare Regional Conference on collective bargaining and contract mediation.
- April 16, 2015: Presentation to the Police Officers Labor Council in Allen Park on recent MERC Decisions and contract settlement trends.

- June 5, 2015: Presentation in Ann Arbor to the Michigan Public Employer Labor Relations Association on recent MERC Decisions, notable mediation anecdotes and contract settlement trends.
- June 19, 2015: Presentation on mediation and settlement trends to the Fraternal Order of Police Labor Council in Bay City.

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

- Grand Valley State University, labor law class.
- Muskegon Area Labor/Management Committee, student collective bargaining program.
- Wayne State University, labor studies class focusing on public sector labor relations

Internal Staff Development

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. Initially arranged by Employee Engagement Specialist Azania Tene Logan and later organized with great attention to detail by Paralegal Ashley Olszewski, a training session will be conducted in early October of 2015 among the entire Bureau staff. The combined training/retreat will take place at the Doubletree (formerly the Thomas Edison Inn) in Port Huron, Michigan. It will be conducted over a 2-day period and promises to offer opportunities for discussion on strategic and succession planning. Also, on the agenda will be 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 will also participate in sessions dealing with valuing differences in the work environment and on inter-generational appreciation - both timely and important topics that will further foster the positive climate that exists among BER employees.

OTHER FY 2015 HIGHLIGHTS

BUDGET

The authorized and available appropriation for the Bureau of Employment Relations during the 2015 fiscal year was \$4,136,300. The Bureau is funded exclusively from State Restricted funds.

DASHBOARD (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; Conduct Consent Elections 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 2015.

MiScorecard Performance							
Agency: Employment Relations				Legend:			
Director Ruthanne Okun				Green 90% or greater of target			
Period: FY 2015				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%	91.3%	86.5%	Annual	% Issued within 12 Months of Record Close
				84 of 92	64 of 74		
Conduct Consent Elections	Green	↑	80%	82.8%	82.6%	Annual	% Held within 65 Days of Filing Petition
				63 of 76	57 of 69		
Mediate Labor Contract Disputes	Green	↑	80%	90.8%	90.7%	Annual	% Contract Negotiations Closed w/o 312 Award or Fact Finding Report
				239 of 263	262 of 289		

REVISED FACSIMILE AND EMAIL FILING POLICY

Effective May 1, 2015, MERC expanded its fax filing policy to allow for the email transmission of certain documents and materials. This added filing option is a direct result of recent agency rule amendments that became effective in late 2014 and advisory committee recommendations provided to the Commission during that same year. To facilitate the email transmission of documents permitted under the policy, designated email addresses have been established for unfair labor practice charges, election/representation-related filings, mediation cases, grievance arbitration appointments, as well as fact finding and compulsory arbitration (Act 312) matters. Note that certain filings sent by email or fax still require the follow-up submission of hard copy originals to complete the filing. Please refer to the agency’s website at www.michigan.gov/merc under the “MERC Policies” link for more details and a list of documents that may be filed electronically using email.

RULE AMENDMENTS

In early FY 2015, revisions to both the Act 312 Rules and General Rules became effective. The new rules are available on the webpage under the “MERC Guide, Rules & Statutes” link. Under this same link are summary charts that highlight many of the substantive changes in each rule set. (Note: Changes that merely update citations or rephrase prior language without altering the meaning or effect of the existing rule are not listed in the summary charts.)

EMPLOYEE ENGAGEMENT

In 2015 (as in 2013), every employee in the Bureau of Employment Relations 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 express and explore views on issues related to their jobs.” Governor Snyder recognizes that employee engagement inspires significant outcomes of real value because when employees are truly engaged, the State of Michigan reaches its full potential. Ensuring high employee engagement is an essential component of the Governor's reinvention of state government.

As noted in the report issued after completion of the survey, 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 a whopping 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. Finally, among the Bureau's mediation ranks, where the employee engagement index hit an extremely high score of 4.68, 96% of the responses to questions were answered with the top scores of 4 or 5 - indicating agreement or strong agreement.

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 were 3 separate areas. They are:

Outdated or Lack of technology – We are working to identify technology issues that are hindering employees from performing their jobs to the maximum, and we will attempt to alleviate those barriers, if possible.

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.

Awareness of Good Government initiatives – We will ensure that the Office of Good Government (OGG) initiatives that exist within our department are fully communicated to Bureau employees. 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 improvement goal that is set is to increase by 3% in each survey item (when the survey is administered next) and to document any potentially mitigating factors that may affect progress.

MERC WEBSITE & RESOURCE MATERIALS

The following materials and information are available from 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 Legislative Changes Impacting Collective Bargaining
- MERC Panel Members (Act 312 Arbitrators, Fact Finders and Grievance Arbitrators)
- Union Audit Filings
- BER Offices
- “What’s New” – which provides new information including recent key rulings by MERC
- Freedom to Work Information with Frequently Asked Questions
- LARA FOIA Requests

Accessing MERC Decisions and Orders

MERC’s website located at www.michigan.gov/merc provides two methods for conducting searches of MERC case decisions: by keyword using the MERC case number, name of a party, or a key word contained within the Decision and Order, or by year/month of issue date. This enhancement is significant and very popular as it provides constituents with a convenient and no cost avenue to obtain recent MERC case law. Older MERC Decisions are accessible through the Library of Michigan as indicated below.

Library of Michigan

In an excellent example of inter-agency cooperation, the Library of Michigan scanned over 4200 MERC decisions and made them available via a link on the MERC website. The decisions, dating back to the first issued on August 16, 1965 are also searchable via www.governingmichigan.org. The collection continues to grow as more recent decisions are added. For questions about the scanning project, contact Bernadette Bartlett, Michigan Documents Librarian, 517-373-2971.

MERC/BER CONTACT INFORMATION

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

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

FORMER BUREAU DIRECTOR SHLOMO “SOL” SPERKA DIES

Ruthanne Okun, Bureau Director

It is with great sadness and fond memories that we report the recent death (in Israel) of former Director of the Bureau of Employment Relations/Michigan Employment Relations Commission (MERC) - Shlomo “Sol” Sperka.

Sol served ably, first, as an Administrative Law Judge for MERC and, later, as Director of the Bureau for 14 years. Before joining the Bureau, he worked as an Attorney for Region 7 of the NLRB. Sol was an adjunct professor at Wayne State University Law School and a professor and Interim Director of the Master of Arts Program in Industrial Relations at Wayne. Sol was a past president of the Association of Labor Relations Agencies - an organization comprised of state, federal, and Canadian agencies whose mission is similar to that of MERC. He was my immediate predecessor, and a true mentor to me and a friend to our entire constituency. Sol “wore shoes” that I could never hope to fill.

Those of us who worked with or were acquainted with Sol will always remember his kindness, along with his calm demeanor and good humor – even when challenged by the most difficult lawyers. His knowledge of labor law and labor issues, in general, and especially of public sector labor law was incredible. He was always willing to share his wisdom with others - available to respond to any question that a constituent may have and ready to debate at the first opportunity. Sol was able to blend his impeccable knowledge with his profound commitment to his Judaism and to his family. He will be remembered as a really wise and decent man, who was dedicated to finding the right answer and doing the right thing. Sol will be missed by the labor-management community and, especially, by us at the Bureau and the Commission.