

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

APPROVED MINUTES  
REGULAR MEETING OF JANUARY 14, 2014  
LANSING, MICHIGAN

The meeting of the Employment Relations Commission was called to order at 10:00 a.m., by the Commission Chair, Edward D. Callaghan, at the State of Michigan Library and Historical Center, Lake Superior Room, 720 W. Kalamazoo, Lansing, Michigan.

Those in attendance: Edward D. Callaghan, Commission Chair; Commissioner Robert S. LaBrant and Commissioner Natalie P. Yaw; Ruthanne Okun, Bureau Director; Lynn Morison, Staff Attorney; James Spalding, Mediation Supervisor; Sidney McBride, Mediator; Ann Warner and Travis Calderwood, Administrative Law Specialists; Verna Miller, Departmental Specialist; Michelle Easter, Law Clerk and Nancy Pitt, Executive Secretary.

Public in Attendance: Representing AFSCME, Attorney George Washington and Attorney Richard G. Mack, Philip Douglas and Eric F. Lowe, Sr.; Attorneys from Thrun Law Firm, Raymond Davis, Katie Broaddus and Kevin S. Harty; Representing City of Detroit, Attorney Ben Coleman, Jones Day, Chicago, Illinois.

It was moved by Commissioner LaBrant and seconded by Commissioner Yaw to adopt the agenda of the regular meeting of January 14, 2014 as proposed. A vote was called on the motion. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

## **MINUTES**

It was moved by Commissioner LaBrant and seconded by Commissioner Yaw to adopt the minutes of the regular meeting of December 10, 2013 as proposed. A vote was called on the motion. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

## **DIRECTOR'S REPORT**

The Act 312 and Fact Finding Reports were reviewed and discussed. Updates were reported by the Director. There are 14 Act 312 cases and 44 Fact Finding cases currently listed on the report.

The Administrative Law Judge Reports were reviewed and discussed. Director Okun reported that ALJ Stern's case status report has been clarified and updated and, as she reiterated that ALJ dockets tend to go in cycles.

The Event Report was reviewed.

The Representation and Election Reports were reviewed and discussed. Updates were reported by the Director. There were inquiries regarding the accretion issue in the Mason Consolidated School case and the status of the Macomb Academy case. It was noted that the new case management system will have the capability to distinguish between the types of Representation cases. The Director suggested and the Commissioners agreed that it would be helpful if Elections Officer Denise Hinneburg be present at the February MERC meeting to explain and answer questions relative to the representation and election reports. There are 66 new and active cases currently listed on the Representation Case Activity Report.

The Mediation Activities Report was reviewed by Mediation Supervisor Spalding. He stated that he has seen and expects to continue to see an increase in grievance mediation activity – especially because of the cost associated with an arbitration.

There were no work stoppages to report.

The Appellate Report was reviewed. There are 9 MERC cases currently pending before the Michigan Court of Appeals and 1 case pending before the Michigan Supreme Court.

## **ADMINISTRATIVE AGENDA**

Updates were reported by the Director in the City of Detroit/AFSCME cases and other cases set forth on the significant case report. The case activity report on open cases involving the 36<sup>th</sup> District Court was also reviewed. Information was also provided regarding the Grand Valley State University representation election.

An overview of the General Advisory Sub-Committee Recommendations was reported by Director Okun and Mediator McBride. Director Okun will provide a list of recommendations to the entire Advisory Committee for comments after receipt of all sub-committee recommendation reports. Commission Chair Callaghan stated that the Act 312/Fact Finding recommendations previously adopted by the Commission should be revisited in conjunction with the General Advisory Committee recommendations. As a follow-up to the General Advisory Committee recommendations, we will revisit Act 312 recommendations and bring back all recommendations of both Advisory Committees to the Commission for further action.

The Public Hearing for the proposed changes to MERC's General Rules tentatively scheduled for February 11, 2014 at 2:00 p.m., has been tentatively rescheduled for April 8, 2014 at 1:00 p.m., in the Commission's offices at 3026 W. Grand Boulevard, Hearing Room 9, Detroit, Michigan. Commission Chair Callaghan will be the facilitator.

There was discussion regarding the 1995 Consent Judgment and if the Commission will seek to have the 1995 Consent Judgment vacated once the Act 312 rules are promulgated. It was moved by Commissioner Yaw that the Commission will move forward to vacate the 1995 Consent Judgment once the Act 312 rules are promulgated. A motion was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

City of Detroit -and- AFSCME Local 312, Case No. D13 J-0890 – The Commission reviewed and considered a letter filed on December 10 by AFSCME Local 312, requesting that the Commission hold the City of Detroit expedited fact finding case in abeyance. The Union attorneys were given the opportunity to present argument on the matter in this case. The Union also requested that the matter be remanded to mediation. It was noted by the Director that in his Opinion and Order regarding the Motion to Remand, Fact Finder Brookover stated that a remand to mediation would not be beneficial to the parties and he determined that the motion to remand the case was denied. The Union expressed opposition to fact finding and stated its belief that the process is being abused by the City and asked that the Commission ensure that a robust mediation process take place. The Commission considered and discussed the various arguments. Ben Coleman of Jones Day representing the City of Detroit stated that mediation had already taken place and was continuing and requested that the expedited Fact Finding proceed without delay. It was moved by Commissioner LaBrant that the Motion for Expedited Fact Finding be denied. A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

There were no new updates to report on pending litigation involving the Commission.

An update was reported by Departmental Specialist Verna Miller on the December 2013 Dashboard Project. She reported that BER remains consistent and is green in all areas. A shout-out was extended to the entire BER staff for their hard work.

The next MERC meeting is scheduled for February 11, 2014 at 10:00 a.m., in the Commission's offices at 3026 W. Grand Boulevard, Suite 2-750, Detroit, Michigan.

## DECISIONAL AGENDA

The Commission decided the following matters:

1. ***Decatur Public Schools -and- Van Buren Co Ed Assn -and- Decatur Educational Support Personnel Assn***, Case Nos. C12 F-123 & C12 F-124.
2. ***Police Officers Association of Michigan -and- Susan French***, Case No. C12 A-009.
3. ***Washtenaw County -and- AFSCME Council 25, Local 3052***, Case Nos. UC09 J-029 & UC06 J-032-A.

In the Washtenaw County case, it was moved by Commissioner LaBrant to adopt the settlement with prejudice reached by the parties. A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

4. ***Delhi Charter Township -and- Delhi Township Fire Fighters, IAFF, Local 5359***, Case No. UC11 J-018.

In the Delhi Charter Township case it was moved by Commissioner LaBrant to deny the Employer's request for reconsideration. A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.

## NEW BUSINESS

The Department of Treasury Emergency Manager/DEP Information and the Deficit District list was reviewed and discussed.

## OLD BUSINESS

The Annual Report is being finalized and will be available in hard copy at the February 11, 2014 MERC meeting.

The MPELRA publication will be ready for distribution in a couple of months and that electronic versions will be available. In fact, it may be that no hard copies will be printed.

The MERC Ethics Statement and Senate Bill 576 was discussed. Commissioner LaBrant has spoken with Frank Waters, LARA's Director of Policy and Legislative Affairs regarding the removal of the MERC Commissioners as lobbyable public officials from the Secretary of State website. Commissioner LaBrant stated that

the MERC Code of Ethics should not be adopted by the Commission as it conflicts with the standard set forth in the Michigan Lobby Law. Commission Chair Callaghan stated that the MERC Code of Ethics might be revised/revisited pending outcome of Senate Bill 576. The Commission decided not to take any action on the matter at this time.

Regarding the MERC ALJ hiring, the Director reported that interviews have taken place, and ALJ candidates are being considered. Director Okun stated that she will keep the Commission apprised of any updates.

### **PUBLIC COMMENT**

There were comments regarding the City of Detroit/AFSCME Local 312 expedited fact finding matter from Union Attorneys George Washington, Richard Mack and Ben Coleman of Jones Day, Chicago, Illinois, representing the City of Detroit.

### **ADJOURNMENT**

There being no further business before the Commission at this time, it was moved by Commissioner Yaw and seconded by Commissioner LaBrant that the meeting be adjourned at 11:26 a.m. A vote was called. Edward D. Callaghan, Aye; Robert S. LaBrant, Aye; Natalie P. Yaw, Aye. The motion passed.