

MERC 312 Arbitrator & Fact Finder Training
Thursday, October 13, 2011
Inn at St. Johns in Plymouth, MI

AGENDA

Time	Level *	Web	Activity	Speakers
8:00 – 8:30	I	Packet	<i>Registration & Continental Breakfast</i>	
8:30 – 10:20	I	A	<p>* <i>Level I = New Panel Members</i></p> <p>WELCOME: Commission & Bureau Director</p> <ul style="list-style-type: none"> • Basic Training of New Panel Members • Hints for New Panel Members 	<p>Edward D. Callaghan, Ph.D - Commission Chair</p> <p>Ruthanne Okun – Director, Bureau of Employment Relations (BER)</p> <p>Thomas Barnes – Arbitrator/Fact Finder</p> <p>Mark Glazer – Arbitrator/Fact Finder</p> <p>Thomas Brooker – Arbitrator/Fact Finder</p> <p>Sherry Murphy – Act 312/Fact Finding Administrative Secretary, BER</p> <p>Maria Greenough – MERC Court Reporter</p>
8:30 – 9:15	II		<i>Registration & Continental Breakfast</i>	
9:15 – 10:20	II	B	<p>* <i>Level II = Seasoned Panel Members</i></p> <p>WELCOME: Commission & Bureau Director</p> <ul style="list-style-type: none"> • Introduction of Co-Sponsors • Recent Cases Affecting 312/Fact Finding • Trends in 312 Awards/FF Reports • What's NEW at the Commission, Bureau, including: <ul style="list-style-type: none"> - MERC Policies & Procedures - Proposed Rule Provisions - Hearings on Documents Only or with Multiple Bargaining Units - Delay in Issuance of Awards/Reports & Ramifications - Common Mistakes to Avoid 	<p>Edward D. Callaghan, Ph.D - Commission Chair</p> <p>Ruthanne Okun – Director, Bureau of Employment Relations (BER)</p> <p>Mary Bedkian – Professor of Law in Residence and Director of the ADR Program – MSU College of Law</p> <p>Lynda Pittman – Retirement Services Director, MERS</p> <p>Sidney McBride – Administrative Law Specialist, BER</p> <p>Tom Kreis – MERC Labor Mediator</p>
10:20 – 10:30	I, II		BREAK	
10:30 – Noon	I, II	C	<p>LEGISLATIVE UPDATES: Impact of Recent Legislation on Act 312/Fact Finding, including:</p> <ul style="list-style-type: none"> • Act 312 Amendments and Introduction to Conducting an Act 312 Hearing Under Public Act 116 • PA 54, PA 63 and PA 152. • Recent PERA Amendments, incl. bargaining constraints 	<p>James Moore – Gregory, Moore, Jeakle & Brooks, PC</p> <p>Malcolm Brown – Butzel Long, PC</p> <p>Art Przybylowicz – MEA General Counsel</p> <p>Ann VanderLaan – Clark Hill, PC</p> <p style="text-align: right;"><i>Micki Czerniak – Moderator, MERC Labor Mediator</i></p>
Noon – 1:00	I, II	Atrium	LUNCH	Comments from Steven Hilfinger, Director of LARA

MERC Fact Finder & 312 Arbitrator Training
Thursday, October 13, 2011
Inn at St. Johns in Plymouth, MI

AGENDA (cont'd)

Time	Level *	Web Packet	Activity	Speakers
1:10 – 2:50	I, II	D	PENSION, INSURANCE AND MUNICIPAL UPDATES <ul style="list-style-type: none"> • Observations from the Advocates 	Lynda Pittman - Retirement Services Director, MERS Mark Manquen – President, Cornerstone Municipal Advisory Group, L.L.C. David Helisek – Plante & Moran, PLLC <i>Management Perspective</i> Howard Shifman – Law Offices of Howard Shifman, PC <i>Labor Perspective</i> Jeffrey Donahue – White, Schneider, Young & Chiodini, PC
2:50 – 3:00 BREAK				
3:00 – 4:30	I, II		PANEL DISCUSSION: Hot Issues & Impact on Act 312 & Fact Finding Processes, including: <ul style="list-style-type: none"> • Mergers, Consolidations and Sharing of Services • EFM Appointments and Collective Bargaining • Governor's Best Practices • Establishing Ability/Inability to Pay, Comparability and Issues Under New Legislation • Other Perplexing or Difficult Issues • Concluding Comments on Fact Finding or Act 312 Proceedings in light of Recent Changes 	<i>Labor Perspective</i> Mark Cousens – General Counsel of AFT Michigan Frank Guido – General Counsel, POAM <i>Management Perspective</i> Charles Oxender – Miller Canfield PLC Dennis Dubay – Keller, Thoma PC Karen Bush Schneider, Attorney/Arbitrator, White, Schneider, Young & Chiodini, PC <i>Participant and Moderator</i>
4:30 RECEPTION				

WEB-POSTED TRAINING MATERIALS

A

- WHO WE ARE
- TALKING POINTS ON ACT 312 & FACTFINDING PROCESSES

B

- TRENDS IN 312 AND FACT FINDING
- RECENT MERC DECISIONS AFFECTING 312 & FACT FINDING

C

- SUMMARY OF CHANGES TO PA 116, 54 & 152 (J. Moore)
- IMPACT OF PA 54, 63, 116 & 152 ON ACT 312, FACT FINDING & COLLECTIVE BARGAINING (M. Brown)
- 2011 TENURE AND COLLECTIVE BARGAINING LEGISLATIVE CHANGES (A. Przybylowicz)
- PROHIBITED SUBJECTS OF BARGAINING UNDER PA 103 (A. Vanderlaan)

D

- MERS' SUSTAINABLE RETIREMENT HANDOUTS
- HEALTH CARE REFORM 2011 DEVELOPMENTS
- AUDITS & ACCURACY ANALYZING THE CURRENT FINANCIAL PICTURE (D. Helisek)

E

- SPEAKERS' BIOGRAPHIES

A

- WHO WE ARE
- TALKING POINTS ON ACT 312 & FACTFINDING PROCESSES

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF EMPLOYMENT RELATIONS
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
By: Bureau Director Ruthanne Okun

I. WHO WE ARE

A. The Commission (MERC)

Chair and two members, part-time, appointed by the Governor with approval of the Senate.

B. The Bureau (BER)

Staff: Director, Mediators, Election Officers, Administrative Law Specialist, Court Reporter, Staff Attorney, Support Staff. Administrative Law Judges who hear and adjudicate MERC cases are employees of the Michigan Administrative Hearing System (MAHS).

II. WHAT WE DO

A. Labor Relations Division – Administers two Statutes:

1. Public Employment Relations Act (PERA)

Public sector labor relations – Conduct elections in which public employees may select a union to represent them. In conjunction with MAHS, resolve charges of unfair labor practices filed against public employers or unions.

2. Labor Relations and Mediation Act (LMA)

Private sector labor relations for employers not covered by the National Labor Relations Act or over whom the NLRB will not take jurisdiction. While this is a “fall back” statute, it no longer covers a significant number of employers.

B. Mediation Division

1. Mediation – Provided to both public and private sector employers and labor organizations.

2. Fact Finding – A non-binding procedure used for non-Act 312-eligible public employees in the public sector to resolve impasses in collective bargaining.

3. Police and Fire Compulsory Arbitration Act, 1969 PA 312, as amended by Act 116 of 2011 – Provides for binding arbitration of contract disputes for “public police or fire department employees,” meaning any employee of a city, county, village or township, engaged as a

police officer, in firefighting or subject to the hazards thereof; emergency medical service personnel employed by a public police or fire department; or an emergency telephone operator, but only if directly employed by a public police or fire department. Per Act 116 of 2011, also includes “authorities” created by local units of government among the covered entities, but exempts an employee of an authority existing on June 1, 2011, except as otherwise provided in Act 116.

III. OUR JURISDICTION

a. Labor Relations

Public employees, except state classified civil service and federal employees.

b. Mediation

Public and private collective bargaining disputes.

IV. OTHER STATUTES AFFECTING OUR AGENCY

a. Administrative Procedures Act

General guidelines for the conduct of contested case hearings.

b. Executive Reorganization Act

Determines the relationship between the Commission and Bureau and our State Department.

V. HOW WE GOT HERE

A. A brief history of the laws we administer:

1. Michigan Labor Relations and Mediation Act of 1939

Essentially a mediation statute for the private sector. Enacted four years after the Wagner Act created the NLRB.

2. Public Employment Relations Act of 1965

Amended the Hutchinson Strike Prohibition Act to give public employees the right to bargain.

3. Michigan Labor Relations and Mediation Act of 1965

Amended the 1939 Act regarding private employers – a “mini NLRB” for private employers outside federal jurisdiction.

4. Police and Fire Compulsory Arbitration Act, (1969) PA 312, as amended by PA 116 of 2011

Binding arbitration in contract negotiations for “public police and fire department employees.”

5. Amendments to the Public Employment Relations Act of 1973

Permitted the Agency Shop and created Union Unfair Labor Practices.

6. Amendments to the Public Employment Relations Act of 1994 (PA 112)

These amendments imposed penalties on public education employees who engage in strikes and limited the scope of bargaining in public education.

7. Numerous recent amendments to the Public Employment Relations Act in 2011

VI. HOW THE AGENCY IS ORGANIZED

Four Programs:

1. Administration
2. Labor Relations
3. Mediation
4. Fact Finding and Arbitration

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10/14/11

MERC 312 Arbitrator & Fact Finder Training
Thursday, October 13, 2011
Inn at St. Johns in Plymouth, MI

- Act 312 and Fact Finding – applicable statutes and rules
- Key Differences between the processes
 - Binding award in Act 312 vs. recommendation and return to bargaining in Fact Finding
 - Formal record in Act 312 vs. none in Fact Finding
 - Cost & Fees (split between parties) in Act 312 vs. State pays entire amount in Fact Finding
 - Coverage – “public police and fire departments” vs. non-public police and fire departments
- Application for Placement on Panel
- Training & qualification requirements for placement on Panel – new statutory requirements in
 - MCL 423.235(2) - Future trainings needed/contemplated – topics/presenters? – January 2012 program at MERS
- Letter of Appointment to Panel
- Biographical Sketch – what should be in a biography? – Format / Samples
 - See Act 312 Rules/Fact Finding rules
 - Continuous updating of biographies – obligation of panel member
- Contract for MERC Services
- Registration for EFT – EFT “ready”
- Present and Past “Advocacy” - definitions and ramifications
- Shadowing program

- Panel Assignment Letters
- Handling Conflicts
 - Need to withdraw from case – recusal or disclosure
- Information Sheets
- Selection Procedure
 - Methods of selection
 - Striking vs. stipulated vs. Commission appointment
 - Strike for “advocacy” and replacement
- Appointment letter
- First Contact with the parties – manner and timing for doing so
- Times lines and constraints for both processes
- Scheduling Conference – Time Constraints in Act 312 and in Fact Finding
- Scheduling Conference Agenda and Rules of Procedure
 - In person vs. by telephone
 - Content & Topics – POAM document
 - Role of Delegate
 - Number of open issues
 - Need for remand and form of remand Order
 - Exhibits and witness lists – order of presentation
 - Pre-hearing motions and Orders
 - Subpoenas
 - Identification of Economic/Non-economic issues – timeliness, logistics of exchange, and ramifications of such. Last offer implications – Act 116

- Exchange of Last Best Offers “up front” in Act 312 - timing, logistics, manner of exchange for same
- Identification of Comparables – internal and external – how to determine and when?
- Contact with Court Reporter and Bureau – cc: Maria and RO on everything
 - Formality of process – 312 vs. Fact Finding
 - Court Reporting Supervisor & Scheduling
 - Court reporter in Act 312/Fact Finding hearing
 - Transcripts and depositions
 - Copy for Panel Member
 - Quarterly and more frequent status updates to Bureau
- Evidentiary Hearings (Fact Finding vs. 312)
 - Notice of Hearing – locale (on whose turf)
 -
 - Reducing /limiting issues
 - Remand to mediation and continued bargaining
 - Statutory constraints
 - Exhibits
 - Exchange and Marking of exhibits
 - Stipulations
 - Witnesses
 - Swearing of Witnesses
 - Arbitrator – oath of Office
 - Order of Proofs and Testimony
 - Role of panel delegates during the hearing
 - Making the Record and Making an Orderly Record

- Activism of neutral
 - Raising new issues at hearing
 - Closing the hearing
 - Additional Matters
- Post hearing briefs
- Closing the record
- Executive session
 - By telephone or in person
 - Open vs. closed
 - Before or after award
- Report/Recommendation or Award
 - Criteria/essentials of Report/Award
 - Act 312 - Rule 13
 - Fact Finding - MERC Administrative Rule 137
 - Other Sample Awards – on our web-site with link to MSU’s web-site
 - Application of Section 9 criteria – including ability to pay and internal comparables
 - Weighing the factors
 - Obtaining signatures of panel delegates
- Return to bargaining after Fact Finding
- Filing of record with MERC and with MSU Library
- Post Award Issues
 - Don’t retain jurisdiction – need to go to court for clarification
- Billing and responsibility for payment

- Allocation for payment in Act 312 cases – prior to and after July 20, 2011
- Quarterly billing to parties for 312/Fact Finding and copy to MERC
 - Ratio of hearing to study days and exceptions to same
 - Travel Reimbursement Policy
 - Verification of and pre-authorization for expenses
 - State Travel Vendor
 - Cancellation fees
- All bills in by September 30, 2011- close of fiscal year
- NEW Billing Policy
- Cancellation fees
- Travel Reimbursement Policy

OTHER ISSUES

- Act 312/Fact Finding in a mixed unit
- Fact Finding involving more than one bargaining unit
- “Expedited” Fact Finding
- Contact with Commission/Bureau/Director/Mediators/Administrator
- Jurisdictional issues
- Determination of mandatory subjects of bargaining
- Managing the hearing
- Dealing with difficult parties/issues/controlling the parties
- Powers of Fact Finder/Act 312 Arbitrator/ALJ
- Methods of streamlining hearings

- Collecting fees
- Talking with the mediator
- Talking with the media
- Hearings in times of fiscal distress/even bankruptcy
- Fact Finding/Act 312 after appointment of an Emergency Manager
- Introduction of Commissioners and new Chair
- Introduction of Bureau staff and contact information
- Need to understand public accounting, statistics, actuaries – MERS, Gabriel Roeder, Plante Moran, other assistance – FUTURE TRAININGS

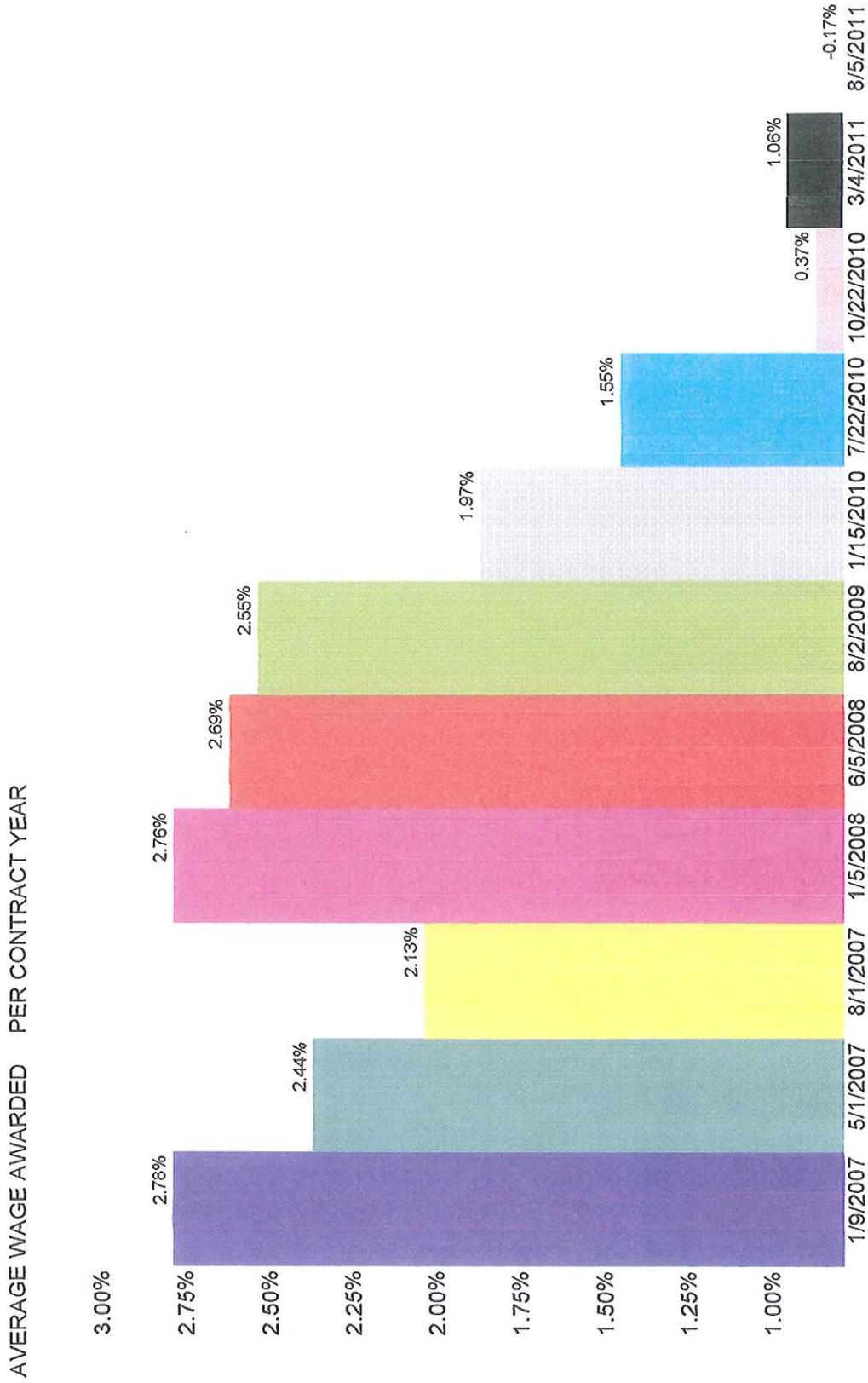
HINTS FOR A NEW ARBITRATOR/FACT FINDER

- Breaking into the Field
- Developing a level of acceptability with the parties
- Becoming a true neutral
- Etc.

B

- TRENDS IN 312 AND FACT FINDING
- RECENT MERC DECISIONS AFFECTING 312 & FACT FINDING

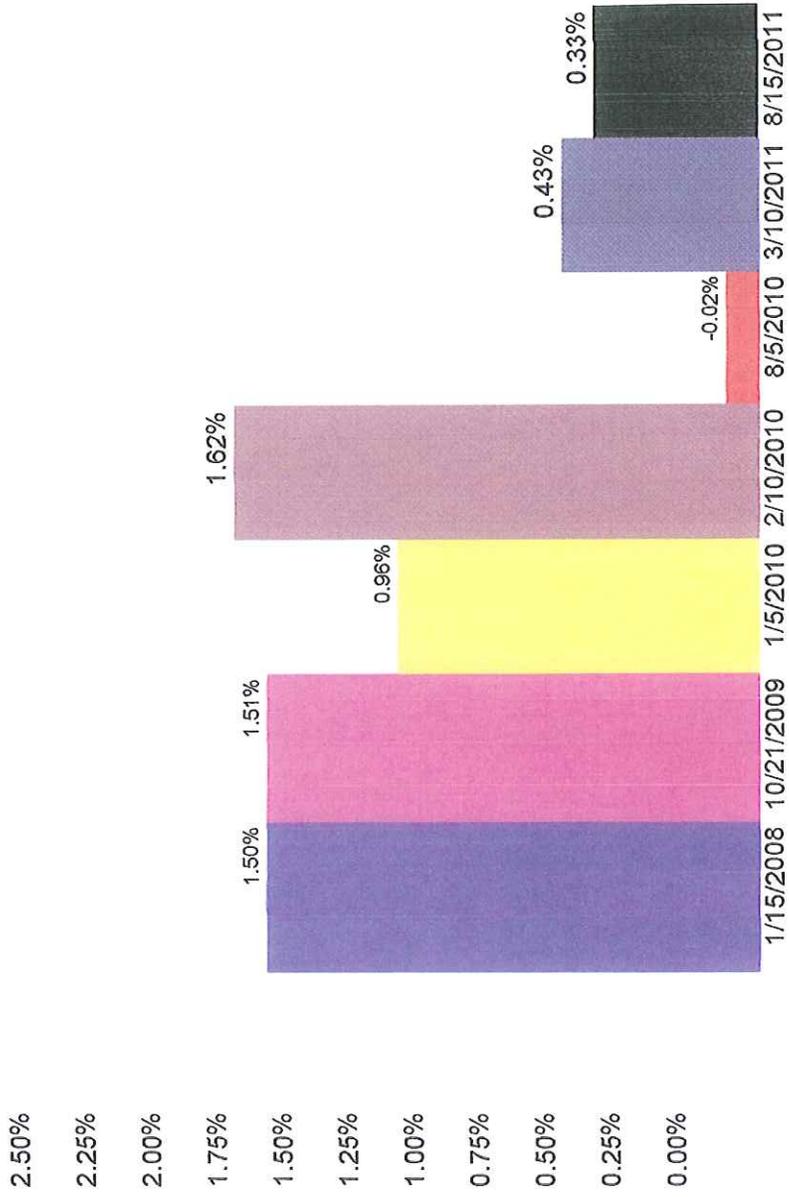
GENERAL COMPUTATIONS OF ACT 312 SYNOPSIS/OBSERVATIONS
WAGES



GENERAL COMPUTATIONS OF FACT FINDING
SYNOPSIS/OBSERVATIONS

WAGES

AVERAGE WAGE RECOMMENDED PER CONTRACT YEAR



***TRAINING OF MERC FACT FINDERS
AND
ACT 312 ARBITRATORS***

The Inn at St. Johns in Plymouth MI
October 13, 2011

**RECENT MERC AND COURT DECISIONS
AFFECTING ACT 312 AND FACT FINDING¹**

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¹ Appreciation is extended to Matthew Bedikian, John Camp, Joshua Leadford and Iryna Sazonova for their assistance preparing these case summaries.

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DUTY TO BARGAIN & EXTENT OF BARGAINING OBLIGATIONS

Significant MERC Decisions

City of Detroit -and- Association of Municipal Engineers, Case No. C08 E-081, issued April 29, 2010.

Unfair Labor Practice Not Found: Charge Summarily Dismissed; Charging Party Failed to State a Cognizable Claim Under PERA; Respondent's Reorganization Plan Not a Mandatory Subject of Bargaining; Employer May Reduce Overtime Hours Unilaterally as Part of its Right to Control Operations; Respondent Fulfilled Requirement to Bargain Over the Effects of Reorganization.

The Commission affirmed the ALJ's Decision and Recommended Order on Summary Disposition finding that the charge filed by Charging Party, Association of Municipal Engineers, against Respondent, City of Detroit, failed to state a claim under PERA. Charging Party alleged that Respondent refused to bargain over its decision to reorganize certain internal divisions. The Union asserted that by failing to negotiate over the reorganization, the Employer violated its statutory duty to bargain. Charging Party also asserted that the reorganization was a mandatory subject of bargaining since it had an effect on employee overtime and compensation.

The Commission disagreed upholding the ALJ's conclusion that the charge failed to state a claim under PERA. MERC explained that Respondent's actions constituted a reorganization, which is within management prerogative and not a mandatory subject of bargaining. The Commission also agreed that the issue of overtime is not a mandatory subject of bargaining, and may be reduced by an employer in order to control its operations. Finally, the Commission found that Respondent had satisfied its obligation to bargain over the effects of the reorganization.

City of Detroit (Police Department) –and- Detroit Police Command Officers Association, Case Nos. C02G-173 & C04 E-120, issued September 27, 2010

Unfair Labor Practice Found - Employer Violated Duty to Bargain; Employer Attempted To Eliminate Two Bargaining Units; Employer Refused to Bargain A Successor Agreement for Commanders' Bargaining Unit Despite Prior Commission Decision Holding the Commanders' Unit is Covered by PERA; Employer Refused to Bargain over the Effects of Reorganization and Refused to Provide Union with Requested Relevant Information. Employer Discriminated Against Charging Party's Members to Discourage Union Activity and Interfere with Section 9 Rights; Employer Attempted to Replace Ranks of Commander and Inspector with Non-Represented Employees.

The Commission upheld the ALJ's conclusion that City of Detroit Police Department (Employer) violated Section 10(1) (a), (c), and (e) in its attempt to eliminate two bargaining units represented by the Detroit Police Command Officers Association (Union). The Commission

found that the Employer violated its duty to bargain over changes in terms and conditions of employment, discriminated against bargaining unit members, and interfered with their Section 9 rights. In the absence of exceptions on the issue, the Commission affirmed the ALJ's recommendation that the Union's allegation protesting the Employer's imposition of a mandatory testing requirement be dismissed as moot, since the tests results were never utilized.

The Union was the MERC certified representative of two bargaining units, one comprising police commanders and the other police inspectors. Prior to the expiration of the parties' current collective bargaining agreements, the Union requested to begin bargaining on successor agreements. The Employer rejected the request as to the commanders' unit, asserting that the commanders were executives and not covered by PERA. As to the inspectors' unit, the negotiations were delayed and ultimately terminated without agreement.

Shortly after the failed negotiations in both units, the Employer announced plans reorganize its police department which included consolidation of twelve existing police precincts into six new districts. The Union made a request to bargain over the reorganization plans and its effects and asked the Employer to provide information relevant to the reorganization. When the parties met to discuss the reorganization, the Employer provided little detail. The Employer disclosed that there would be a reduction in the number of inspectors and commanders but did not inform the Union that it had already reached a decision to entirely eliminate the rank of inspector the following day.

Considering the Employer's refusal to bargain over a successor agreement for the commander's unit, the effects of reorganization including the elimination of the a unit comprising command officers, the Commission found compelling evidence that Respondent violated its bargaining and discriminated against bargaining unit members by interfering with their Section 9 rights.

The Employer's assertion that the commanders were not covered by PERA was rejected most recently in the unit clarification decision in *City of Detroit (Police Dep't)*, 20 MPER 64 (2007). The Commission likewise found no merit in Respondent's assertion that it had a legitimate belief that a contract covering the commanders' unit was permissive. Respondent further contended that the city charter authorizes the removal of command officers at the discretion of the police chief. However, MERC noted that the charter's authority is superseded by the duty to bargain imposed by PERA. *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44 (1974).

City of Detroit –and- Association of City of Detroit Supervisors, Case No. C05 K-276, issued July 15, 2010

Unfair Labor Practice Found – Failure of an Employer to Bargain over the Impact of a Change in Work Rule; While the Decision to Change the Way an Employee's Job is Performed is Within Management's Prerogative, an Employer has a Duty to Bargain over the Impact of the Change when It Represents a Material Change in Working Conditions; Implementation of a Disciplinary Rule for Not Complying with Changes in Work Procedures is a Material Change in Working Conditions.

Unfair Labor Practice Not Found – Employer Has No Duty to Bargain With a Supervisory Unit

On the Transfer of Work that is Performed by Employees Subordinate to Supervisory Unit's Members.

The Commission affirmed the ALJ's Decision and Recommended Order (in part) as to the charge alleging the Employer's duty to bargain over the transfer of work performed by subordinate employees not within Charging Party's bargaining unit. In this case, Charging Party's members supervised employees in Union responsible for street maintenance functions. Respondent then transferred some of the duties of the street maintenance functions to members of Union Y in other departments, but who were not supervised by Charging Party's members. Charging Party objected alleging that the Employer's actions constituted an improper transfer of bargaining unit work. The ALJ concluded that the Employer's decision changing the way the work was performed by Union Y's members was within management's prerogative. MERC concurred with the ALJ that the Employer had no duty to bargain over the transfer of work between departments, since the work transfer pertained to bargaining unit duties performed by rank and file employees in a non-supervisory unit. MERC also agreed with the ALJ's reasoning that Charging Party's work had only diminished, not transferred, and Respondent had no duty to bargain over a transfer of work that was outside Charging Party's unit.

However, in changing the procedures for performing the work, the Employer warned that failure to adhere to the new procedures would result in discipline. By establishing a new disciplinary rule, the Employer had a duty to bargain over the material change in working conditions. The ALJ determined that Charging Party failed to demand to bargain over the impact of the new work rule and recommended dismissal. On exceptions, MERC reversed finding instead that Charging Party had indeed demanded to bargain over the new work rule's impact.

County of Wayne –and- American Federation of State, County and Municipal Employees, Council 25. Case No. C09 F-89. Issued February 11, 2011

Unfair Labor Practice Found: Respondent Repudiated its Contractual Obligation by Failing to Make Annual Service Adjustment (ASA) Payments to Charging Party's Bargaining Units as Outlined in the Clear and Explicit Language of the Parties' Memoranda of Agreement; Commission Lacks Authority to Cancel a Party's Obligation Under an Agreement Merely Because It Becomes Onerous. Successor Contract Language Bars ASA Payments to Charging Party's Supervisory Unit during Contract Term.

The Commission affirmed the ALJ's decision and recommended order on summary dismissal finding that the Employer repudiated its contractual obligation by failing to make annual service adjustment payments (ASAs) to Charging Party's members as provided under the terms of two memoranda of agreement (MOAs).

Charging Party represents two categories of bargaining unit members who work in supervisory and non-supervisory positions. During the course of negotiations on separate collective bargaining agreements covering the 2004-2008 period, the parties entered into separate MOAs

providing for the payment of a two percent ASA commencing June 1, 2009 and continuing annually. The executed MOAs contained no expiration date, and were later incorporated into the respective 2004-2008 retroactive contracts.

In January 2009, the parties began negotiating on successor collective bargaining agreements for the 2008-2011 contract period. On October 3, 2009, a successor agreement covering Charging Party's supervisory unit was executed that included language waiving the payment of any ASAs during the 2008-2011 contract term. The parties failed to reach a successor agreement for the non-supervisory unit, and no ASAs had been paid to members of either of the two bargaining units.

Respondent argued that the MOAs expired on September 30, 2008 along with the retroactive contracts thereby making the MOAs unenforceable and impossible to repudiate. The Commission rejected this contention and agreed with the ALJ's finding that since the initial ASA payments under the MOAs clearly fell outside of the scheduled expiration date for the retroactive bargaining agreements, the parties did not intend for the MOAs to expire with the 2004-2008 contracts.

Respondent also alleged that it was not obligated to pay out the ASAs beginning June 1, 2009, because the parties had bargained to impasse on that single issue during the 2008-2011 contract negotiations. Here again, the Commission disagreed concluding that Respondent was obligated to maintain the status quo on the terms of the signed MOAs that the parties freely entered into. Since the MOAs contained no expiration date and survived the expiration of the 2004-2008 agreements, neither party had a duty to bargain further on those provisions and neither party could lawfully bargain to impasse over those provisions. In refusing to make the ASA payments beginning June 1, 2009, Respondent committed an unfair labor practice by repudiating its contractual obligations under the MOAs.

The Commission also adopted the ALJ's conclusion that ASA payments under the supervisory unit's MOA were barred for the period from October 1, 2008 through September 30, 2011. Charging Party objected and argued that payment was still proper for any ASAs that became due prior to the execution of the successor contract. The Commission reasoned that the parties bargained and ratified language in their successor contract that superseded any payment obligation under MOA during the 2008-2011 contract term. However, this new language did not nullify the finding that the Employer committed an unfair labor practice by repudiating the terms of the supervisory unit's MOA prior to the execution of the successor contract on October 3, 2009.

City of Roseville –and- AFSCME Council 25 and its Affiliated Local 52, MERC Case No. C08 I-196, issued June 11, 2010

Unfair Labor Practice Found – Failure to Bargain in Good Faith; Where an Agreement on a Permissive Subject of Bargaining is the Quid Pro Quo for an Agreement on a Mandatory Subject of Bargaining, Respondent's Repudiation of the Agreement is Unlawful.

MERC disagreed with the ALJ's recommendation for charge dismissal, and instead held that the City of Roseville (Respondent) unlawfully repudiated the parties' letter of agreement (LOA) and violated its duty to bargain in good faith under Section 10(1)(e) of PERA.

In 1992, Respondent and Charging Party (AFSCME) signed a LOA permitting the Employer to (1) subcontract bargaining unit work provided that (2) no bargaining unit member would be laid off as a result, and that (3) Respondent maintained a requisite number of employees in the bargaining unit. The parties agreed that the LOA would remain effective as long as Respondent utilized subcontractors; however, the LOA was never incorporated into the collective bargaining agreement. During contract negotiations in 2008, Respondent announced that it would no longer recognize the LOA. Relying on the Management's Right clause, the Employer, instead, introduced a new contract provision dealing with staffing levels, and consistently rejected the Union's requests to bargain over the issue asserting that the matter constituted a permissive subject of bargaining.

The ALJ, relying on *Chemical & Alkali Workers of America v Pittsburgh Plate Glass*, 404 US 157 (1971), reasoned that a mid-term repudiation only violates PERA if it involves a mandatory subject of bargaining. As such, the ALJ concluded that because the subject matter of the LOA covered bargaining unit size, a permissive subject of bargaining, Respondent could repudiate the agreement.

Upon review, the Commission rejected the ALJ's reasoning, instead, noting that "although we give federal precedent great weight in interpreting PERA, [we are] not bound to follow its every turn and twist." MERC viewed the critical issue as "whether an agreement on the permissive subject of staffing can be unilaterally withdrawn when it is given in exchange for agreement on a mandatory subject of bargaining" and determined it could not. Because the LOA involved a permissive subject of bargaining (minimum manning) that was also intertwined with an agreement over a mandatory subject of bargaining (subcontracting), MERC viewed a repudiation of a part of the agreement as a repudiation of the entire agreement. Since the *quid pro quo* between the parties involved a promise to maintain staffing levels in exchange for a concession on subcontracting, allowing the repudiation of one segment of the LOA would undermine the entire collective bargaining process. MERC also concluded that the breach of the LOA would have a substantial and significant impact on the bargaining unit.

Redford Union School District -and- Wayne County MEA/NEA, Case Nos. C07 F-132 & CU07 F-030, issued April 15, 2010

Unfair Labor Practice Found – Employer Violated Duty to Bargain Over Mandatory Subjects; Employer's Unilateral Imposition of Purported Last Best Offer Unlawful Where Parties Were Not at Impasse; Impasse Not Found Where Both Parties' Positions Not Fixed; Respondent's Unilateral Imposition Found Premature Where the Union Suggested Mediation and Employer Was Acceptable to Less Favorable Terms than Those Imposed.

Unfair Labor Practice Not Found – Union Did Not Violate Its Duty to Bargain; Employer's Charging Party's Claim that Union Refused to Negotiate After Imposition Was Inconsistent with

the Second Claim that Parties Had Reached a Tentative Agreement; Commission Lacks Authority to Remedy Claims Under PERA Section 17 that the Union Refused to Submit Tentative Agreement to Membership for Ratification.

The Commission affirmed the ALJ's Decision and Recommended Order finding that the Employer, Redford Union School District, violated its duty to bargain under PERA § 10(1)(e) when it prematurely imposed its last, best offer, while the Union, Wayne County MEA/NEA, had not violated PERA by allegedly refusing to negotiate following imposition. The Commission further held that it lacks jurisdiction over claims brought under PERA § 17.

The Employer was operating at a deficit in violation of state law. Because of the deficit, the Employer filed a deficit elimination plan that proposed a wage freeze (excluding step increases), and shifting the increased costs of fringe benefits to the employees. By December 2006, (15 months after contract expiration), the parties had reached agreement on several matters, but had not resolved their issues on wages and health insurance. In January 2007, the Union offered to settle all remaining issues. The Employer countered by proposing to change health insurance plans, restructuring the Employer's share of costs, and rendering the wage issue non-negotiable during the contract term. The parties continued to negotiate. In April 2007, the Union suggested calling in a mediator for assistance. However, prior to any mediation, the Employer emailed the Union indicating ... "at the meeting earlier this week you confirmed that [we] have been at impasse since our last offer. We agree." The Union responded by denying any mention of impasse and, again, reiterated its desire for mediation. Subsequently, the Employer imposed its purported "Last Best Offer".

In reaching a conclusion that the Employer violated PERA, the ALJ found the Union's testimony more credible than the Employer's on the issue of whether impasse had occurred. The Commission agreed with the ALJ's reasoning that (1) unilateral action by the employer on a mandatory bargaining subject is permitted under PERA § 10(1)(e) provided the parties are at impasse and the action is consistent with the last best offer; (2) an employer cannot declare an impasse exists absent the true futility of further negotiation; and (3) the determination of whether impasse exists is made on a case-by-case basis, accounting for the totality of the circumstances and the entire conduct of the parties. MERC found it significant that the Employer had declined to engage a mediator (particularly in light of the Union's requests), and that there was evidence supporting that the Employer's willingness to accept terms less favorable than those imposed.

In the second charge, the Employer alleged that the Union breached its duty to bargain under PERA § 15 by refusing to negotiate following imposition of new terms, and that the Union violated § 17 by refusing to present a tentative agreement to its membership. In affirming the ALJ, the Commission ruled against the Employer on both points. First, the Employer's claim that the parties had reached a tentative agreement undermined its assertion that the Union had refused to bargain. Second, if a tentative agreement was reached (a claim the Commission found to be unsupported by the record), the Commission lacks jurisdiction over claims brought under PERA § 17 as the section expressly indicates enforcement in the circuit court.

City of Detroit –and- Senior Accountants, Analysts and Appraisers Association
Case No. C06 D-098, issued February 10, 2011

Unfair Labor Practice Not Found; No Breach of the Duty to Bargain; Union Requested Imposition of Previously Rejected Tentative Agreement; Employer's Implementation of Reduction in Work Hours Authorized by Union Agreement.

The Commission affirmed the ALJ's decision finding that the Employer did not violate its duty to bargain when it reduced the work hours of certain bargaining unit employees.

Facing a budget deficit, the City initially proposed a new health insurance plan, known as the Mercer Plan, and proposed to reduce wages by implementing a ten percent reduction in hours worked in the form of days off without pay (DOWOP). While trying to arrive at a successor agreement, the parties agreed to extend their current contract to July 1, 2006. After several months of negotiations, in January 2006, the City offered a new health insurance plan, known as the Alternative Health Care proposal, which was less costly to the employees. The City explained that in order for that plan to be implemented, the parties would have to come to an agreement by July 1, 2006. Following subsequent negotiations, on June 1, the parties entered into a tentative three-year agreement that included the Alternative Health Care plan, a 4% raise at the end of the three years, several language changes sought by the Union and a memorandum of understanding explaining how DOWOPs would be scheduled. The tentative agreement was presented to Charging Party's members who rejected it by a two to one margin, largely because of opposition to the DOWOPs in grant and enterprise-funded departments.

Shortly thereafter, the City, once again, informed the Union that its proposals and the tentative agreement were conditioned on achieving a ratified agreement by July 1, 2006; otherwise the Alternative Health Care proposal along with other economic and noneconomic incentives would be withdrawn and the City would return to its original table position. In response, the Union President hand-delivered a letter to the City's labor relations director, discussing why the tentative agreement was rejected by the membership, subsequent efforts to modify the language of the agreement, and other matters. The letter ended with a statement that the tentative agreement should be imposed by the Employer on July 1, and that the parties' mutual understanding should draw the matter to a close. In response, the City sent a letter to the Union stating that the terms of the tentative agreement reached on June 1 would be imposed and noting the effective date of the healthcare benefit changes and the pay period in which the DOWOPs would commence. The Alternative Health Care plan became effective for the Union's members on July 15 and the DOWOPs were imposed on some of Charging Party's bargaining unit members.

The Union contended that the City procured its agreement by threatening unlawful unilateral action, i.e. to impose the terms of its official table position. It asserted that the threat violated the City's duty to bargain in good faith, therefore, the parties' agreement should be declared void. The Commission concurred with the ALJ that the Union's decision to ask the City to impose the tentative agreement was a reasoned choice between available alternatives, one which allowed the

Union to take advantage of several incentives including a four percent wage increase at the end of the three-year contract. The Commission held that by agreeing to the terms of the tentative agreement reached at the bargaining table in order to avoid the imposition of a less favorable plan, the Union made an election that it should not disturb. The Commission also agreed with the ALJ that the parties formed a contract on the terms of their prior tentative agreement, which included the imposition of DOWOPs and left the choice of the bargaining unit positions that would be subject to DOWOPs to the City's discretion.

Royal Oak Public Schools –and- Royal Oak Educational Association

Case No. C07 E-098, Issued November 18, 2010

Unfair Labor Practice Not Found - Right to Make Changes to School Hours Covered By Parties' Existing Agreement; Right to Bargain School Hours Issue was Waived by Entering Collective Bargaining Agreement Covering that Issue. Issue of Alleged Failure to Bargain School Hours Became Moot When Parties Entered Subsequent Contract Containing the Same Language on School Hours that was the Subject of the Dispute

The Commission affirmed the ALJ's Decision and Recommended Order finding that Royal Oak Public Schools (Employer) did not violate its duty to bargain under PERA when it made changes in school starting and ending times without consenting to the Union's demand to bargain.

Article II(A)(5) of the 2003-2006 collective bargaining agreement between the parties provides that the Employer has the right "to determine class schedules after considering the needs of the teachers and the program, determine hours of instruction, and the duties, responsibilities and assignments of teachers." The parties entered into a series of agreements extending the terms of the 2003-2006 contract through July 12, 2007.

While that agreement was pending, and while the parties were negotiating a successor agreement, the Employer changed the starting and ending times for its middle and elementary schools for the 2007-2008 school year. The Union demanded to bargain over the change, but the Employer refused, pointing to Article II (A)(5) of the 2003-2006 collective bargaining agreement. The Union filed the charge in this matter contending that the Employer breached its duty to bargain.

In August 2007, the parties entered into a successor agreement that covered the school years 2006-2007 and 2008-2009. The agreement contained the same language in Article II(A)(5) as the parties 2003-2006 collective bargaining agreement. Subsequently, on April 24, 2008, the Employer changed the starting and ending times for one of its elementary schools. Again, the Union demanded to bargain over the change and the Employer refused. The Union amended its charge to adding a new allegation that the Employer violated its duty to bargain.

The Commission agreed with the ALJ's conclusion that the Union had waived its right to bargain school starting and ending times when it agreed to the language of Article II(A)(5) in the successive agreements. The ALJ found and the Commission agreed that by maintaining the

language of Article II(A)(5) in the successor agreements, the Union's charge that the Employer failed to bargain the change in school starting and ending times became moot. Moreover, the Union's contention that the Employer misinterpreted the language of Article II(A)(5) is a matter for grievance procedure under the parties' contract.

In discussing the specific language of Article II(A)(5), which required the Employer to consider the needs of the teachers and the program when determining class schedules, the Commission pointed out that the Employer's obligation to "consider" could be done unilaterally and did not necessarily require the participation of, or consultation with, the Union.

Wayne County –and- Michigan AFSCME Council 25, AFL-CIO
Case No. C10 A-024, issued March 29, 2011

Unfair Labor Practice Found - Unilateral Change in Working Conditions During Pendency of Fact Finding; Employer Violated Duty to Bargain by Unilaterally Imposing a Reduction in Workweek; Unilateral Reduction in Workweek not within the Managerial Prerogative; No Bona Fide Dispute over Interpretation of Expired Contract given the Clear Definition of Layoff and Workweek; Employer Admitted All Material Facts Supporting the ALJ's Recommended Decision; Evidentiary Hearing not Warranted as no Dispute of Material Fact Existed. Employer Waived its Right to Oral Argument by Failing to Affirmatively Request it; Charge of ALJ Bias Without Merit. Further Exceptions not Considered as the Issues were not Raised before ALJ.

The Commission affirmed the ALJ's Decision and Recommended Order on Summary Disposition finding that the Employer violated PERA when it unilaterally reduced the workweek of certain employees while fact-finding proceedings were pending.

The parties' most recent collective bargaining agreement expired without the parties entering into a successor agreement. After bargaining for some time, the Union filed for fact finding in September 2009. On January 22, 2010 (with fact finding still pending), the Employer notified certain bargaining unit members that some of them would be laid off every Friday while others would be laid off every other Friday. The layoffs were to begin the week after notices were sent to the employees.

The Commission rejected the Employer's claim that the ALJ committed reversible error by failing to conduct oral argument before issuing his recommended decision. The Commission found that the Employer waived its right to oral argument when it failed to specifically request oral argument in its response to the order to show cause.

The Commission disagreed with the Employer's claim that the ALJ improperly shifted the burden in this case by requiring it to respond to the order to show cause with a valid defense to the charge. The Commission found that the ALJ's issuance of the show cause order indicated that the ALJ determined that the Union asserted facts establishing a prima facie case. By issuing the show cause order, the ALJ provided the Employer with the opportunity to dispute the material facts alleged in the charge and to assert a legal defense. The Commission agreed with the ALJ that the Employer failed to assert that material facts were disputed and failed to plead an

adequate legal defense. Accordingly, the Commission agreed with the ALJ that an evidentiary hearing was not warranted because there were no material issues of fact.

The Commission also agreed with the ALJ that the Employer's unilateral reduction of the workweek constituted an unlawful change in working conditions. The Commission found that while managerial prerogative includes the right to determine the size of its workforce, it does not include the right to unilaterally reduce the length of workweek. The Commission found that a reduction in the workweek is a mandatory subject of bargaining and, therefore, the Employer could not take unilateral action during fact finding.

The Commission also agreed with the ALJ that no contract interpretation issue existed given the clear definitions of layoff and workweek in the parties' expired contract. The contract provisions defined layoff as a separation from employment and workweek and five eight-hour days; in this case there was no separation from employment.

Finally, the Commission found that the issues addresses in two of the Employer's exceptions were not raised before the ALJ. Because the issues were not raised before the ALJ, it was not appropriate for the Commission to entertain the Employer's arguments on those matters.

Harrison Community Schools –and- Harrison Educational Support Personnel Association, MEA/NEA, Case No. C07 G-164, issued September 20, 2010

Unfair Labor Practice Found - Violation of the Duty to Bargain; Employer's Decision to Subcontract Services Provided by Bargaining Unit Employees is Generally a Mandatory Subject of Bargaining; A Public School Employer's Decision to Subcontract Non-instructional Support Services is a Prohibited Subject of Bargaining; Determination of Whether Services are "Non-instructional Support" Is Made on Case-by-Case Basis; The Decision to Subcontract the Duties of Aides Who Perform Instructional Support Services is a Mandatory Subject of Bargaining.

The Commissioners agreed with the ALJ's conclusion that Harrison Community Schools (Employer) violated its duty to bargain under PERA by subcontracting the services provided by its aides without giving Harrison Educational Support Personnel Association, MEA/NEA (Union) the opportunity to bargain over the decision.

The Employer claimed that it had no duty to bargain, contending that the aides provided non-instructional support services. It also asserted that pursuant to Section 15(3)(f) of PERA, the decision to subcontract non-instructional support services is a prohibited subject of bargaining. The primary issue before MERC was whether the aides performed non-instructional support services.

The Employer contended that the ALJ erred in the interpretation of Act 112 of 1994, which amended PERA to add Section 15(3)(f). Since the final version of the draft of Act 112 deleted specific illustrative examples of non-instructional support services, the Employer argued that the Legislature intended that all services performed by support staff would be treated as non-

instructional support services. The Commission disagreed finding that the deletion of illustrative examples indicated the Legislature's intent for that determination to be made based on the particular facts and the specific duties performed by the positions involved. To assume otherwise would go against the accepted rules of statutory construction.

The Employer further alleged that the ALJ failed to properly consider and apply various statutes in interpreting Section 15(3)(f) of PERA. In support of its allegation, the Employer pointed to certain sections of the Revised School Code, MCL 380.1229 & 380.1231, regarding the obligation of a school board to hire a superintendent and teachers. Because such obligation does not extend to personnel other than the superintendent and teachers, the Employer assumed that all other services provided by the school employees are non-instructional and can be subcontracted without the duty to bargain with the employees' union representatives.

The Employer argued that services provided by the aides cannot be considered instructional because aides cannot legally provide instructional services, lacking the proper education and training, etc. The Commission disagreed with that assertion and explained that, under the appropriate factual circumstances, services provided by a paraprofessional working under the direction of a certified teacher may include such services as providing supplemental group instruction and individual tutoring on academic subjects, all of which can be considered to be instructional support services. The Commission, agreeing with the ALJ, found that instructional support services may be provided by employees who are not certified teachers, and the duty to bargain extends to employer's decisions regarding subcontracting their services.

In support of its position, the Employer also pointed to Commission decisions in which the Commission found that aides cannot be included in a bargaining unit of professional teachers. However, the cases cited by the Employer focus on the issue of community of interest, which is not relevant in determining whether the support services provided by the aides are instructional or non-instructional.

Finally, the Commission disagreed with the Employer's allegation that the ALJ failed to properly consider affidavits of its witnesses, who claimed that aides do not provide instruction. The affidavits provided by the Employer's witnesses clearly indicated that aides do, in fact, provide instructional services ranging from assisting students with their lessons to tutoring students and providing individual instruction, all performed under the supervision of a certified teacher.

In this case, the Commission found that, with the exception of the aides providing only health and personal care, the services provided by the aides are instructional support services. Therefore, the Employer had a duty to bargain before deciding whether to subcontract the aides' services. It violated that duty when the Employer decided to subcontract the aides' services without first giving the Union notice and an opportunity to bargain.

Pontiac School District –and- Pontiac Education Association
Case No. C04 H-215. Issued September 20, 2010.

Unfair Labor Practice Found-Refusal to Bargain Over a Mandatory Subject; Subcontracting

Bargaining Unit Work is Generally a Mandatory Subject of Bargaining; PERA Section 15(3)(f) Provides Statutory Exception to General Rule for Public School Employers Subcontracting Non-instructional Support Services; Party Attempting to Utilize Affirmative Defense Bears the Burden of Proof; Waiver of Bargaining Rights must be Clear; Waiver not Inferred; Return to the Status Quo Ante Appropriate to Provide Adequate Relief.

In its decision the Commission adopted the ALJ's recommended order finding that the Pontiac School District (Employer) had committed an unfair labor practice when it refused to bargain over its decision to subcontract bargaining unit work.

In May 2004, the Employer laid off physical and occupational therapists who were members of a mixed bargaining unit of teachers and other professional staff represented by the Pontiac Education Association (Union). The Employer did not notify the Union of its subcontracting or layoff plans until after the bargaining unit members were already laid off. Despite demands by the Union, the Employer refused to bargain over the matter during May 2004 and June 2004. Subsequently, the Employer signed a contract with a private company to provide the services of physical and occupational therapists for the 2004 -2005 school year. On July 26, 2005, the Employer notified the Union that it was willing to bargain over the outsourcing of the therapists' services for the 2005-2006 school year, if the Union contacted the Employer no later than the following day. When the Union failed to contact the Employer within the one day deadline, the Employer contended that the Union had waived its right to bargain over the issue. The Employer again contended that the Union had waived its right to bargain over the issue after the parties exchanged correspondence on the matter in late 2005. The Employer argued that it was prohibited from bargaining over the subcontracting of therapists' services pursuant to section 15(3)(f) of PERA which prohibits a public school employer from bargaining over the subcontracting of non-instructional support services.

Over the Employer's exceptions, MERC agreed with the ALJ that the decision to subcontract bargaining unit work is typically a mandatory subject of bargaining and that section 15(3)(f) is an exception to this general rule. The Commission also held (along with the ALJ) that the bargaining duty exception was raised as an affirmative defense by the Employer who bears the burden to show that the outsourced work involved "non-instructional support services".

The Commission also agreed with the ALJ that the therapists' positions were not "non-instructional" within the statute's intended meaning. Although it declined to adopt the ALJ's definition of "non-instructional support services," MERC explained that it would decide the issue on a case-by-case basis. Based on the duties and responsibilities of the therapists in this case, the positions were deemed as instructional and Section 15 (f) 3 exception did not apply.

Here, the therapists worked directly with disabled students to train them to develop and enhance skills that would allow them to succeed in their educational endeavors. They also worked closely with certified teachers and paraprofessionals to evaluate the needs of students and provide the students with programs and tools that would assist them in the educational process. Further, the therapists trained the classroom instructors on these programs to enable their use in the classroom in the therapists' absence. This training and instruction was needed to ensure the

students were capable of learning the subjects taught as part of the school's traditional curriculum.

The Commission also concluded that the Union did not waive its bargaining right by not responding to the Employer within its one day time limit. The Commission concluded that the Employer's arbitrary deadline indicated a lack of good faith in dealing with the Union on the issue. Also, in rejecting the Employer's contention that the parties' subsequent exchange of communications constituted an impasse, the Commission determined that the record was insufficient to determine that the parties "had so solidified their positions" as to find that an impasse had occurred.

The Employer's final argument on exceptions was that the ALJ's recommendation returning the parties to the status quo ante was inappropriate. The Commission disagreed and concluded that the only means of providing appropriate relief to the Union was to put the parties back in their positions prior to when the unfair labor practice occurred. If not, any order to bargain further would be no more than a 'useless gesture.'

Lakeview Community Schools –and- Lakeview Educational Support Personnel Association, MEA/NEA & Mt. Pleasant Public Schools –and- Michigan AFSCME Council 25, AFL-CIO, and its Affiliated Local 2310.

Case Nos. C10 C-059 & C10 E-104, issued May 11, 2011.

Unfair Labor Practice not Found – Public School Employer Subcontracting Non-instructional Support Services; No Duty to Bargain over Bidding Procedure If Union Representing Bargaining Unit Currently Providing such Services is Permitted to Bid on Equal Basis with other Bidders; Bidding Requirements and Procedures Need Not Be Tailored to Meet Characteristics of Labor Organizations; If Employer fails to Allow Union to Submit Bid on Equal Basis with Third Party Contractors, Statutory Prohibition Against Bargaining is Removed; Concessionary Proposal for a Collective Bargaining Agreement not a Bid; Failure to Submit Bid Waives Argument as to not Receiving Opportunity to Bid on Equal Basis.

The Commission affirmed the ALJ's decision and recommended order on summary disposition finding that the Respondents, both public school employers, did not violate their duty to bargain when they refused to negotiate with Unions representing their respective bargaining units over the process for submitting bids to provide non-instructional support services, under Section 15(3)(f) of PERA. The Commission found that the Charging Party Unions failed to show that they had not been permitted to bid on an equal basis with third party bidders.

In both cases, the Employers sent out requests for proposals (RFPs) for certain non-instructional support services. Both RFPs listed qualifications that were to be met by successful bidders. The RFP's required bidders to post bonds, submit financial reports, and provide personnel. However, the RFP issued by Respondent Mt. Pleasant Public Schools (Mt. Pleasant) contained a provision allowing bidders to request exceptions to the requirements of the RFP.

In the *Lakeview Community Schools* (Lakeview) case, the Union submitted a concessionary proposal seeking to maintain the bargaining unit's employment by the school district. In the *Mt. Pleasant* case, the Union did not submit a bid. In both cases the Unions filed unfair labor practice charges alleging violations of PERA stemming from the Employers' refusal to negotiate the process by which the Unions would bid on the RFPs.

The Commission held that §15(3)(f) of PERA did not mandate bargaining over the bidding procedures. Instead, the Commission held that the "only issue to be bargained with regard to bidding is whether the bargaining unit is to be given an opportunity to bid on an equal basis as other bidders." If such an opportunity is not provided by the employer, the prohibitions against bargaining under §15(3)(f) are removed.

The Commission rejected the Unions' arguments that they were disqualified from bidding by certain requirements of the RFPs, which were designed for third party contractors. The Commission explained:

It is to be expected that RFPs will be designed for a potential multiplicity of third-party contractors wishing to submit bids. That the bargaining unit will be called upon to meet some of the same conditions required of third party bidders is implicit in the statute, which provides for an equal bidding opportunity, not one that is designed for response by a bargaining unit or a labor organization.

The Commission rejected the Unions' contention that the Employers had the burden of showing that the Unions were given an equal opportunity to bid on providing the non-instructional support services and held that the Unions bore the burden of proving that an equal bidding opportunity had not been provided. The Commission reasoned that as the Unions sought to avoid the general prohibitions against bargaining in §15(3)(f) of PERA, they bore the burden to provide evidentiary support for their arguments.

The Commission also found that neither of the Unions submitted bids. In *Mt. Pleasant*, no bid was submitted; while in *Lakeview*, the Union submitted a concessionary proposal for a collective bargaining agreement. Therefore, the Commission concluded that both Unions waived any claim they might have that they had been denied the opportunity to bid on the RFPs on an equal basis as third party bidders.

The Commission noted the Unions' exceptions to the ALJ's suggestion that labor organizations form corporations or create other entities for the purpose of bidding for contracts to provide non-instructional support services. The Commission found the suggestion raised an issue not before the Commission, that is, the issue of whether the equal bidding opportunity preserved for the bargaining unit by statute is transferable to another entity. Therefore, the Commission also rejected the Unions' arguments related to the ALJ's suggestion and found that neither the Michigan Contracts of Public Servants with Public Entities Act nor the Employer's vendor relations policies had any bearing on the matter.

Finding no evidence that the Unions had been denied an equal opportunity to bid on providing non-instructional support services, the Commission dismissed the charges.

City of Flint (Police Dept) –and- Police Officers Labor Council (Flint Police Sergeants Association) & Police Officers Labor Council (Flint Police Captains and Lieutenants Association)

MERC Case Nos. C07 B-022 & C07 B-023, issued July 12, 2011 (on remand from the COA)

Unfair Labor Practice Not Found On Remand from Court of Appeals; Parties' Dispute Regarding Promotions to Newly Created Positions is Covered by the Contract and is therefore Arbitrable; Finding of Past Practice Over Promotion Procedures Reversed as such Procedures were Never Applied to Positions not Enumerated in Parties' Collective Bargaining Agreements; Claim Regarding Transfer of Work Waived as no Exception was Taken to ALJ's Finding that any such Transfer did not Significantly Impact the Bargaining Unit.

Following an appeal from MERC's earlier decision in this matter, the Court of Appeals (COA) reversed MERC's initial finding of an established past practice regarding promotion procedures and remanded the matter to MERC for further proceedings. On remand, MERC dismissed the unfair labor practice charges filed against the City of Flint (Employer) by Police Officers Labor Council (Flint Police Sergeants Association) and Police Officers Labor Council (Flint Police Captains and Lieutenants Association) (Unions).

The Unions represent command officers in the police department of the City of Flint. Pursuant to the parties' collective bargaining agreements, promotions to certain specifically enumerated positions were to be made from eligibility lists compiled from the test scores of the candidates for promotion. The Employer was to select the person to be promoted from the three highest scoring candidates on the respective eligibility list.

The Employer formed a new bureau within its police department and created two new job classifications to staff it. The new job classifications, which were not mentioned in the parties' collective bargaining agreements, were paid more than sergeants. The Employer unilaterally promoted patrol officers to fill the positions without regard for the contractual promotion procedures.

In the initial decision, MERC adopted the ALJ's finding that a past practice existed regarding promotion procedures and that the Employer violated PERA by failing to adhere to the past practice in filling the positions in the new bureau. However, the COA reversed MERC on this issue as it found nothing in the record indicated the promotion procedures had ever been applied to positions not specifically identified in the parties' contracts. Moreover, since promotional procedures were covered by the parties' collective bargaining agreements, which also contained grievance procedures culminating in binding arbitration, the parties' dispute was arbitrable. Accordingly, MERC found that the Employer did not violate its bargaining duty under PERA.

MERC also held that the Unions had waived any claim they might have had that the Employer violated its duty to bargain over the transfer of bargaining unit work because the Unions failed to file exceptions to the ALJ's finding that any such transfer of duties had no significant impact on

the bargaining units.

BARGAINING DUTY & UNIT COMPOSITION ISSUES RELATED TO ACT 312

Significant MERC Decisions

Kalamazoo County –and- Kalamazoo County Sheriff’s Deputies’ Association
Case No. C08 A-018, issued March 11, 2011

Unfair Labor Practice Found – Employer’s Unlawful Repudiation of Agreement to Provide COLA Increase; No Bona Fide Dispute Regarding Contract Interpretation; Parties Positions in Negotiations not so Solidified as to be at Impasse; ALJ’s Refusal to Consolidate with Employer’s Charge Against Union not Improper; Filing of Act 312 Petition does not Limit MERC’s Authority to Adjudicate Pre-Impasse Unilateral Changes in Working Conditions. Prior Decisions Suggesting to the Contrary are Overruled.

The Commission affirmed the ALJ’s decision and recommended order finding that the Employer repudiated an agreement to pay periodic cost of living adjustments (COLA) and made an unlawful unilateral change in conditions of employment before impasse.

The parties have entered into agreements containing provisions for COLA for the previous three decades. The most recent contract expired December 2007, it too contained a provision for quarterly COLA increases. Since 1988, the contracts also contained addenda which expressly mandated an obligation to continue COLA after contract expiration to ensure members would receive increases during negotiations for a successor agreement.

The Employer did not issue COLA payments in April and July 2007 at the times due under the contract. After the Union’s grievance of the Employer’s failure to pay was arbitrated, the Employer was ordered to make the payments in accordance with the parties’ contract. Additionally, after the contract expired, the Employer did not make COLA increases in January 2008.

The parties began negotiating a successor agreement in October 2007. The Union proposed to freeze COLA for three years and replace it with a four percent per year increase. The Employer proposed to eliminate COLA altogether. The Union filed for Act 312 arbitration around December 2007; however, the record was unclear on whether the Employer announced its decision to forgo COLA before or after the Act 312 petition was filed.

The Commission determined that the contract’s language regarding COLA increases was unambiguous and no bona fide dispute over its interpretation existed. Because of this, the Commission found the Employer repudiated the parties’ agreement by failing to grant COLA. The Commission rejected the Employer’s argument that the parties were at impasse as the

Commission did not find that the parties' positions had so solidified that they had reached a point where neither party was willing to compromise. Thus, the Employer's failure to abide by the terms of the expired contract was a violation of its duty to bargain under §10(1)(e).

Relying on *City of Flint*, 1993 MERC Lab Op 181, the Employer argued that the filing of an Act 312 petition indicated the parties were at impasse. The Commission rejected that argument and noted that Act 312 petitions are frequently filed before the parties are at impasse and cases often settle after an Act 312 petition has been filed.

The Employer also relied on *City of Flint* as support for its argument that the Commission has no jurisdiction over a violation of the duty to bargain occurring after an Act 312 petition has been filed. The Commission explained that Act 312 is a supplement to PERA. Both Act 312 and PERA restrict parties from making unilateral changes of mandatory subjects of bargaining in expired contracts. Under PERA, the restriction on making such changes is limited to the period before the parties reach impasse. Act 312, on the other hand, prohibits unilateral changes made after an Act 312 petition has been filed whether or not the parties are at impasse. Thus, in some instances, unilateral changes of mandatory subjects of bargaining could violate both PERA and Act 312. In cases where an Act 312 petition has been filed, yet the parties are not at impasse, the Commission retains jurisdiction to adjudicate the unfair labor practice charge. It is after impasse that Act 312 stands alone to prohibit unilateral changes during the arbitration process, and MERC lacks jurisdiction to adjudicate such a violation. Thus, the Commission concluded that whether the announcement of the Employer's intention to eliminate COLA occurred before or after the Act 312 petition was filed was irrelevant.

The Commission held that when there has been no bona fide impasse, a change that violates §10 of PERA may be remedied under §16, notwithstanding the pendency of an Act 312 proceeding. Finally, the Commission concluded that "[t]o the extent that prior decisions suggest otherwise, they are hereby overruled."

Lake County and Lake County Sheriff -and- Police Officers Association of Michigan
Case No. C07 A-011, issued June 25, 2009.

Unfair Labor Practice Found - Respondents' Refusal to Proceed to Arbitration on a Grievance that is Arguably Arbitrable Violates the Duty to Bargain in Good Faith; Respondents had No Duty to Arbitrate Grievance under Expired Contract; Grievance is Arguably Arbitrable under New Contract in which the Effective Date Precedes the Date of the Grievance. Respondent's Refusal to Arbitrate the Grievance is a Violation of PERA. Determination of Whether a Grievance is Actually Arbitrable is Properly Addressed by the Arbitrator or the Courts.

The Commission affirmed the ALJ's Decision and Recommended Order finding that Respondents, Lake County and Lake County Sheriff (collectively, the Employers), violated Section 10(1)(e) of PERA by refusing to arbitrate a grievance filed by Charging Party, Police Officers Association of Michigan (POAM). Charging Party and Respondents were parties to a 2003-2005 collective bargaining agreement that contained a grievance procedure concluding in binding arbitration as well as a "just cause" termination clause. As of the contract's expiration in

December 2005, the parties had not reached an agreement to extend the term or provisions of the contract.

The parties reached a tentative agreement in May 2006. After the Union ratified the agreement, Respondent's counsel put it in writing and submitted the draft version to Charging Party's business agent for signature. The draft provided the contract was effective January 1, 2006 and would be in full force and effect until December 31, 2008. After further negotiations, the business agent signed the contract on September 19, 2006. The parties continued to negotiate over certain provisions and the agreement, was not ratified and signed by all parties until November 8, 2006. The new contract included the language in the draft that provided the contract became effective January 1, 2006. After the contract was signed on November 8, 2006, Respondent paid employees wage increases retroactive to January 1, 2006.

On September 15, 2006, Respondents discharged a bargaining unit member. Charging Party filed a grievance over the discharge on September 20, 2006. Respondents denied the grievance, arguing that since the discharge occurred after the expiration of the 2003-2005 contract and prior to the execution of the 2006-2008 contract it was not covered by the "just cause" provisions of either collective bargaining agreement. Upon notification by the Union that it intended to pursue the matter to arbitration, Respondents refused to submit the grievance to arbitration.

The Commission agreed with the ALJ that the grievance in question was arguably arbitrable under the 2006-2008 contract. The Commission considered the contract provision stating an effective date of January 1, 2006 and evidence that Respondents had applied that effective date to other provisions of the contract, such as retroactive wage increases. Respondents argued that during the final phase of contract negotiations. Respondents' counsel sent communications to Charging Party asserting that grievances filed after the expiration of the 2003-2005 contract would not be arbitrated. Respondents contended that these communications became part of the parties' agreement. However, these communications were not expressly incorporated into the 2006-2008 contract. Therefore, the Commission agreed with the ALJ that the grievances were arguably arbitrable under the new contract and therefore, Respondents violated their duty to bargain in good faith under Section 10(1)(e) by refusing to submit the grievance to arbitration.

In response to Respondents' exception that the ALJ erred by *sua sponte* raising the point that the 2006-2008 contract contained an effective date of January 1, 2006, the Commission held that Rule 172(2) of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.172(1), requires that an ALJ inquire fully into the facts involved in the matter before him or her. This stipulation includes the reading of exhibits and the application of the law to facts derived from those exhibits. Thus, the Commission held that the ALJ properly considered the facts in the record that led her to conclude that the grievance was arguably arbitrable.

Finally, the Commission explained that finding the grievance is arguably arbitrable is sufficient to resolve the issue before it, the question of the grievance's actual arbitrability must be left to the arbitrator or the courts.

City of Detroit –and- Police Officers Association of Michigan –and- Detroit Emergency Medical Services Association

Case No. R10 F-065, issued November 10, 2010

Petition for Representation Election Granted - Commission Reversed its Policy Regarding the Act 312 Election Bar; Incumbent Union had Filed an Act 312 Interest Arbitration Petition and Attempted to Invoke Act 312 Election Bar; Bar Acted to Usurp Employees' Statutory Right to Choose Bargaining Representative. Even if Commission Maintained Act 312 Election Bar, the Policy Would Not Apply in this Instance; Two Week Window in Which to File Election Petition held Insufficient.

The Commission issued a decision directing an election despite the fact that the incumbent union, Police Officers Association of Michigan (POAM), had filed an Act 312 interest arbitration petition. The Commission reversed its previous policy regarding the Act 312 election bar.

In this case POAM was first certified as the exclusive representative of the bargaining unit on June 1, 2009, and has not secured its first collective bargaining agreement with the City. On June 11, 2010, POAM filed a petition for Act 312 interest arbitration. Detroit Emergency Medical Services Association (DEMSA) filed a petition for a representation election on June 28, 2010, seeking to replace POAM as the unit's representative.

POAM sought dismissal of the representation petition on the basis of the Commission's Act 312 election bar policy. POAM argued that the two week window between the expiration of the one year certification bar and its filing of the Act 312 petition was a sufficient timeframe in which an election petition could have been filed. DEMSA argued that the Act 312 election bar is improper as it blocked the employees' right to freely choose a representative and that this right is the overriding value protected by PERA. DEMSA also contended that the Act 312 bar policy exceeded the authority granted to Commission by the Legislature, as the Legislature had already enacted several specific periods during which representation petitions were barred, but had not similarly adopted a bar for periods during which an Act 312 proceeding was pending. DEMSA asserted that the Act 312 bar is inconsistent with the handling of election petitions in bargaining units that are not covered by Act 312, as no bar exists that would prevent an election when an incumbent union is engaged in fact finding. DEMSA further argued that even if the policy was maintained by the Commission, it should not apply in this case because the Act 312 petition filed by POAM was defective because POAM had not engaged in bargaining prior to filing the Act 312 petition.

The Commission determined that the Act 312 election bar could be used to "thwart the paramount statutory right [of employees] to freely select or reject an exclusive representative." Additionally, the Commission reviewed the statutory history surrounding Act 312 and determined that the Legislature may have intentionally withheld from the Commission the authority to create an election bar not expressly provided for in PERA. The Commission

observed that while amending PERA to include the contract bar, the Legislature did not adopt a recommendation to grant the Commission the authority to create further election bar regulations. Further, the Commission determined that even if it upheld the Act 312 election bar policy, it would be inappropriate to apply the bar in this instance. The Commission explained that employees must be given a reasonable time period after the expiration of the certification bar within which to petition for a change in representation and found that it was not reasonable to expect employees to file a representation petition within the undisclosed two week period present in this case. Ultimately, employees' statutory rights must be protected and the Act 312 election bar treads too heavily on those rights to warrant its continued enforcement.

Charter Township of Delta –and- Firefighters Association of Michigan,
Case No. UC08 J-026, issued January 13, 2011

Petition for Unit Clarification Granted-Fire Inspector Shares Community of Interest with Bargaining Unit of Firefighters Based on Commonality of Purpose and Similarities in Duties, Skills and Working Conditions. Fire Inspector Position Eligible for Act 312 Interest Arbitration as it is Subject to Hazards of Firefighting; Agreement Between the Parties Regarding Temporary Position not a Waiver by Union of Right to Seek Representation of Permanent Fire Inspector Position; Fire Inspector Without Employer-Wide Policy Making Authority or Level of Control Sufficient to Justify a Finding of Executive Status.

The Commission granted the unit clarification petition filed by the Firefighters Association of Michigan (FAOM) to clarify the bargaining unit to include the newly created position of fire inspector within a unit of firefighter/paramedics.

The Township created the fire inspector position in response to two deputy fire chiefs retiring from service. Before the creation of the fire inspector position the deputy chiefs had performed fire inspection duties; never before had a position been solely dedicated to performing fire inspection duties. Deputy fire chiefs were not members of the bargaining unit. "D", a current bargaining unit member and paramedic/firefighter, possessed the requisite certification to perform the position and was promoted to the position of fire inspector.

At the time the position was created and filled, the Township had not made a final decision as to the permanency of the appointment. Because of this, the Township and FAOM entered into an agreement to allow D to act as fire inspector on a six month basis; during this period D's status as a bargaining unit member remained unchanged. However, the agreement also reflected the Township's position that the fire inspector was a non-union position.

The fire inspector performs on site structure inspections to determine compliance with the fire code and also inspects blueprints to determine compliance. Additionally, the fire inspector interprets and proposes changes to the fire code. The fire inspector also acts as fire investigator at the scene of a structure fire and will enter a recently burned structure to determine the cause of the fire. The fire inspector also responds to emergency calls and assists at the scene of an emergency; acting in a number of capacities which directly support fire suppression efforts.

Although the fire inspector would not normally enter the hazard zone (the area directly surrounding the scene) during a fire, D still possess firefighting protective gear and could be called upon to act in such a capacity during an emergency or shortage of staff.

The Commission determined that the fire inspector shares a community of interest with the bargaining unit based on the similarity of skills, duties, working conditions, and commonality of purpose. Further, the Commission determined the position to be eligible for Act 312 interest arbitration, finding the fire inspector is subject to the hazards of firefighting, since her responsibilities include entering burned structures, and providing assistance at fire scenes which could encompass performing suppression/rescue duties in an emergency. The Commission further concluded that the agreement between the parties regarding the temporary position did not waive the FOAM's right to seek representation of the permanent position. Finally, the fire inspector is not an executive position as the position performs no duties which establish policies on an employer-wide basis nor plays any role in the financial or labor affairs of the Township.

C

- SUMMARY OF CHANGES TO PA 116, 54 & 152 (J. Moore)
- IMPACT OF PA 54, 63, 116 & 152 ON ACT 312, FACT FINDING & COLLECTIVE BARGAINING (M. Brown)
- 2011 TENURE AND COLLECTIVE BARGAINING LEGISLATIVE CHANGES (A. Przybylowicz)
- PROHIBITED SUBJECTS OF BARGAINING UNDER PA 103 (A. Vanderlaan)

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
INN AT ST. JOHN'S, PLYMOUTH, MICHIGAN

ACT 312 and FACT FINDER TRAINING

OCTOBER 13, 2011

2011 PUBLIC ACT 116

Amends 1969 PA 312

2011 PUBLIC ACT 54

Amends 1947 PA 336 (PERA)

2011 PUBLIC ACT 152

PUBLICLY FUNDED HEALTH INSURANCE CONTRIBUTION ACT

JAMES M. MOORE
GREGORY, MOORE, JEAKLE & BROOKS, P.C.
65 Cadillac Square Suite 3727
Detroit, Michigan 48226
313.964.5600
jim@unionlaw.net

PUBLIC ACT 116 (H.B. 4522)

1. Amends Act 312.
2. Effective on July 20, 2011.
3. Includes "authorities" as employers except where employees, as of June 1, 2011 were employed by authorities and were not represented by a bargaining unit or a contract on that date. Section 2.
4. MERC is to establish qualifications and training for panel chairs which may be waived for those who served before the amendments. Section 5(3).
5. Sets time limits, including completion of the hearing, including the filing of post-hearing briefs within 180 days "after it commences." The consequences of a failure to adhere to time limits are not identified. Section 6.
6. The "expense of the proceedings . . . shall be borne by the parties." The State no longer pays a portion of the chairperson's fee. Section 6.
7. Requires submission of last offers of settlement on economic issues "before the beginning of the hearing." Section 8.
8. Requires the arbitration panel to give the "most significance" to the public employer's "financial ability to pay" defined to include the "financial impact on the community," the "interests and welfare of the public" and "[a]ll liabilities, whether or not they appear on the balance sheet of the unit of government." Sections 9(1)(a); 9(2).
9. Requires panel consideration of the wages, hours and other terms and conditions of employment of "other employees" of the employer "outside of the bargaining unit in question." Section 9(1)(e).

PUBLIC ACT 54 (H.B. 4152)

1. Amends the Public Employment Relations Act.
2. The effective date is June 8, 2011.
3. Upon the expiration of a collective bargaining agreement, wages and benefit levels are frozen, including wage step increases. Extensions pending negotiations for a successor agreement do not extend the expiration date set forth in the contract.
4. Any increased cost of maintaining "health, dental, vision, prescription or other insurance benefits" after contract expiration is borne by employees. Increased payroll deductions to fund such increases are authorized.
5. Parties to a collective bargaining agreement may not agree to nor may an arbitration panel order "any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration of the collective bargaining agreement."
6. If a collective bargaining agreement expired before the effective date of the Act, wages and benefits are limited "to the levels and amounts in effect on" June 8, 2011.

PUBLIC ACT 152 (S.B. 7)

The Publicly Funded Health Insurance Contribution Act

1. Establishes limits on the amounts that a public employer may pay for employee health care benefits (“including but not limited to hospital and physician services, prescription drugs and related benefits”) or be subject to sanctions.
2. Beginning with the benefit year commencing January 1, 2012, annual limitations are either a “hard cap” or and 80/20 provision.
3. The hard cap is \$5,500 single; \$11,000 individual and spouse; and \$15,000 family. These amounts are aggregated. The maximum employer contribution is calculated by multiplying the number of employees in each category by the dollar amount and adding them together to establish the employer’s maximum contribution which may be allocated by the employer “as it sees fit.” The hard cap amounts are subject to annual adjustments by the State Treasurer based on the medical care component of the CPI.
4. The 80/20 alternative formula mandates that the employer’s total contribution may be no more than 80% of its total expenditure for employee health care benefits. An employer’s election of this option requires a majority vote of the employer’s governing body. Only elected officials are required to pay 20% or more of the annual costs for health care. Except for that provision, the employer may allocate its payments for health care costs amongst its employees “as it sees fit” without regard to how it impacts individual employees, so long as the employer’s annual payments do not exceed 80% of the total cost. There is no requirement that individual employees must pay 20% of their health care costs.
5. The provisions of the statute do not apply to a bargaining unit with an unexpired collective bargaining agreement “executed” before September 15, 2011 – until the CBA expires. Under these circumstances, the employer does not utilize the health care expenditures spent for this bargaining unit in calculating the 80/20 formula.
6. A “local government unit” may opt out of this legislation by a two-thirds vote of its governing body. Where a local unit of government has a chief administrative officer that person must also approve the exemption. School districts may not opt out.
7. A public employer’s failure to comply with the law results in a 10% reduction in the employer’s economic vitality incentive program payment or School Aid payment.
8. The cost imposed on an individual employee pursuant to this Act may be deducted from an employee’s paycheck, by conditioning eligibility for medical benefit plans on authorizing the employer to make the deduction.
9. If a court finds one of the statutory alternatives invalid the other expenditure limit shall apply.

**Michigan Employment Relations Commission
Arbitrator & Fact-Finding Training
October 13, 2011**

**Impact on Act 312, Fact-Finding
and Collective Bargaining of:**

54 P.A. 2011

63 P.A. 2011

116 P.A. 2011

152 P.A. 2011

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ACT 312 TIMELINE AND ISSUES

STATUTORY TIMELINE

Section 3 (prior language – no change was made to Section 3).

1. A request for Act 312 arbitration can be made after submission of dispute to mediation for 30 days.

Section 5(1) (prior language – no change to this part of Section 5):

2. “Within 7 days of a request from 1 or both parties, the employment relations commission shall select from its panel of arbitrators... 3 persons as nominees for impartial arbitrator...”
3. “Within 5 days after the selection, each party may peremptorily strike the name of 1 of the nominees.”
4. “Within 7 days after this five-day period, the commission shall designate 1 of the remaining nominees as the impartial arbitrator... of the arbitration panel.”

Section 6 (amended):

5. “The arbitrator shall act as chair of the panel of arbitration, call and begin a hearing within 15 days after appointment, and give reasonable notice of the time and place of the hearing.”

Section 8 (amended):

6. “The arbitration panel shall identify the economic issues in dispute... before the beginning of the hearing.”
7. “The arbitration panel shall... direct each of the parties to submit to the arbitration panel and to each other its last offer of settlement on each economic issue before the beginning of the hearing.”

As set forth in the amendments to Act 312, these two steps are set forth in a single sentence in Section 8.

Note: This change to Act 312, in effect, legislatively overrules *POAM v. Ottawa County*, 264 Mich App 133 (2004). No economic issues can be added after the arbitration panel issues its decision identifying those issues.

- Final offers must be exchanged and submitted to the Arbitrator
- Will probably require early costing of any pension issues in order to make a last offer of settlement within 15 days of appointment.
- What if the parties dispute whether an issue is economic or non-economic?
- What if the duration of the labor contract is in dispute?
- Requires last offers of settlement before the parties are required to identify their comparables and before a decision on comparables. Even if a list of comparables is required to be submitted by the Act 312 arbitrator there will be little time to consider and analyze comparables.
- Providing last offers within 15 days (or prior to submission of evidence) may tend to undermine §9 factors.
 - Last offers should be based on all of the evidence. Neither party will have the other party's evidence when last offers are made. Last offers will be 6 months old when the briefs are filed and 9 months old when an award is made by the Panel.
 - Last offers will be made before the information on the municipality's finances and the wages and benefits of other municipal unions is submitted.
- Can this provision be applied to provide for last offers after the prehearing/scheduling conference but a predetermined number of days before the start of the evidentiary hearing, resulting in the following sequence:
 - Appointment of Arbitrator
 - Scheduling conference within 15 days of appointment where dates are set for identification of economic issues, exchange last offers, and to start evidentiary hearing
 - Identification of economic issues by arbitration panel
 - Exchange of last offers
 - Start of evidentiary hearing

This sequence of events while not resolving many of the issues noted above will provide at least some time to resolve initial issues before exchange of last offers.
- Can the parties/arbitrator stipulate to exchange and file amended last offers at the end of the hearing?

HIGHLIGHTS OF ACT 54

- Effective Date: June 8, 2011
- Applies to time period after labor contract expiration and before a new labor contract is “in place.”
- Labor contract expiration means:
 - Expiration date in labor contract
 - Without regard to any agreement to extend or honor the existing labor contract pending negotiations
- Prohibits:
 - Payment of any wage or benefit levels greater than those in effect on the contract expiration date, including:
 - No wage step increases
 - Employee to pay any increases in:
 - Healthcare
 - Prescription
 - Dental
 - Vision
 - Other insurance benefits
 - Authorizes payroll deductions for above amounts
 - No retroactive wage or benefit payments/amounts. Act 312 Arbitrator cannot order retroactivity. The parties cannot agree to retroactivity.
- Act 54 and Act 312:
 - Act 312 (Section 10) states:

“Increases in rates of compensation or other benefits may be awarded retroactivity to the commencement of any period(s) in dispute, any other statute, or charter provision to the contrary notwithstanding.”
 - Act 312 (Section 13) states:

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 36050
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

September 1, 2011

John Lund, PhD
Director, Office of Labor-Management Standards
United States Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

Re: Michigan 2011 Public Act 54

Dear Mr. Lund:

In response to your inquiry, my opinion is that Michigan 2011 Public Act 54 (Public Act 54) does not eliminate the transit authorities' duty to bargain in good faith. Wages and health care benefits still are mandatory subjects of bargaining. Public Act 54 only applies to that time "after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place." Section 15b(1) of PA 54, MCL 423.215b(1). While Public Act 54 defines expiration date "without regard to any agreement of the parties to extend or honor an agreement pending negotiations," this definition does not limit the parties' ability to negotiate and enter into successive agreements of limited duration to overcome the statute's limiting language, irrespective of when such an agreement is executed. Likewise, the statute does not prevent the parties from agreeing in a successor collective bargaining agreement to compensate employees for economic effects that may occur as a result of Public Act 54, so long as such an agreement does not involve any retroactive adjustment of wage or benefit levels or amounts during the period "after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place." Section 15b(1), (4)(a) of PA 54, MCL 423.215b(1), (4)(a). Thus, the parties may negotiate such agreements to commence upon the expiration of the collective bargaining agreement and to extend through whatever time the parties agree upon, including until such time as negotiations succeed in establishing a successor agreement.

Sincerely,

David D. Brickey
David D. Brickey
Assistant Attorney General
Division Chief, Transportation Division
517-373-1479

DDB/sjl
cc: Mr. Michael Gadola

Only cities, villages, townships and counties (and some authorities) meet the definition of “local unit of government.”

School districts and all other public entities do not fall within definition and cannot opt out (exempt themselves).

- Any labor contract or other contract in effect (executed) on September 14, 2011 bars premium share for the length of the contract.
- Penalty: loss of 10% of economic vitality incentive program payment (formerly known as statutory revenue sharing).

ISSUES

- Are the following negotiable and/or subject to Act 312?
 - Decision to apply hard caps, 80%/20% and, where applicable, opt out (exemption).
 - Calculation of and application of premium share (allocation as the “public employer.... sees fit”).
 - Can an Act 312 arbitrator allocate the costs within the Act 312 unit?
 - Can an Act 312 arbitrator make an award such that other employees pay a greater share of healthcare costs than the Act 312 unit?

MEA

Michigan Education Association

2011 TENURE AND COLLECTIVE BARGAINING LEGISLATIVE CHANGES

Factfinder and Act 312 Arbitrator Training

The Inn at St. John's—Plymouth, Michigan
Thursday, October 13, 2011

**Arthur R. Przybylowicz,
MEA General Counsel &
Associate Executive Director
for Legal Services**

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2011 TENURE AND COLLECTIVE BARGAINING
LEGISLATIVE CHANGES

I. CHANGES TO THE TEACHER TENURE ACT (PA 100 and PA 101)

- A. The changes to the Teacher Tenure Act became effective immediately upon signing by the Governor on July 19, 2011.
- B. The length of the probationary period has been extended for most new teachers.
 - 1. The probationary period has been extended from four full school years to at least five full school years for most teachers first employed by a Michigan school district after July 19, 2011.
 - 2. In order to gain tenure status, a probationary teacher must serve at least five full school years and have been rated as "effective" or "highly effective" on each of his or her three most recent annual year-end performance evaluations. Thus, a teacher may remain on probationary status for an indefinite number of years beyond five, if the teacher fails to obtain three consecutive "effective" or "highly effective" year-end performance evaluations.
 - 3. A probationary teacher who has been rated as "highly effective" in each of his or her last three annual year-end performance evaluations may obtain tenure status after four full school years of employment.
 - 4. A teacher "under contract" as a probationary teacher on July 19, 2011, is on probation during his or her first four full school years of employment. However, that probationary teacher is subject to the other new requirements for probationary teachers during the remainder of his or her probationary period.
- C. A probationary teacher may be dismissed by the school board at any time.
 - 1. A probationary teacher "shall be employed" for the ensuing school year unless notified in writing at least 15 days before the end of the school year that his or her services have been ineffective and that his or her employment will be ended.
 - 2. Despite the language that the probationary teacher shall be employed for the ensuing school year, this provision is made subject to another provision that a probationary teacher may be

dismissed from his or her employment by the school board at any time.

- D. The evaluation process for probationary teachers shall be determined by the local school board, but must include requirements imposed by the Teacher Tenure Act and Section 1249 of the Revised School Code.
1. The format, timing, or number of classroom observations for probationary teachers is now a prohibited topic of bargaining and is to be determined by the school board, so long as the school board meets the requirements of the Teacher Tenure Act and Section 1249 of the Revised School Code.
 2. The school district must now provide all probationary teachers, including first-year probationary teachers, with an individualized development plan (IDP) developed by administrative personnel in consultation with the individual teacher.
 3. The school district must provide an annual year-end performance evaluation to each probationary teacher that must include at least an assessment of the teacher's progress in meeting the goals of his or her IDP and must be based upon classroom observations. The school board must determine the format and number of classroom observations in consultation with teachers and school administrators.
 4. Other evaluation requirements for probationary teachers apply to the evaluations of all teachers and will be discussed in the evaluation section below. See Part II, Section C (pages 5-8) below.
 5. Previously, the failure of the school district to meet the evaluation requirements was conclusive evidence that the teacher's services were satisfactory during that school year. There does not appear to be any penalty to the school district under the amended Teacher Tenure Act for failure to meet its own evaluation procedures.
- E. Tenured teachers are now subject to longer unpaid suspensions without review by the State Tenure Commission and may be discharged or demoted for any reason that is not arbitrary or capricious.
1. Instead of the State Tenure Commission having jurisdiction over unpaid suspensions of tenured teachers for more than three days, the State Tenure Commission may now only review suspensions without pay for 15 or more consecutive days or a reduction in compensation equivalent to 30 days' pay. Thus, a tenured teacher may be subject to a suspension for up to three consecutive weeks

without pay or multiple suspensions without pay during the same school year for less than 30 days total without review by the State Tenure Commission.

2. The hearing process before an administrative law judge and review by the State Tenure Commission is essentially the same, except a couple of the timelines for the hearing before the administrative law judge are reduced. The hearing before the administrative law judge must now begin no more than 45 days after the school board files its answer with the State Tenure Commission, instead of 60 days, and the hearing must conclude no more than 75 days after the teacher's appeal was filed, instead of 90 days.
 3. A school board may now discharge or demote a tenured teacher for a reason that is not arbitrary or capricious, instead of only being able to discharge or demote for reasonable and just cause.
 4. If criminal charges have been filed against a tenured teacher, the school board may place the teacher's salary in an escrow account until a decision by the administrative law judge. The school board has the option whether to continue health or life insurance benefits during the suspension. If the teacher ultimately prevails in the tenure appeal, he or she will be entitled to the money in the escrow account, while the school board will be entitled to a return of the money, if the administrative law judge discharges or demotes the teacher.
- F. A school board continues to have the right to place a tenured teacher on an unrequested leave of absence due to a physical or mental disability. The school board may now condition reinstatement on the teacher furnishing verification acceptable to the school board of the teacher's ability to perform his or her essential job functions.
- G. A tenured teacher must be provided an annual year-end performance evaluation.
1. The school board has the right to determine the format and number of classroom observations for the evaluation "in consultation with teachers and school administrators."
 2. A tenured teacher who receives a rating of "ineffective" or "minimally effective" on an annual year-end performance evaluation must be provided with an IDP developed by the appropriate administrative personnel "in consultation" with the individual teacher. The IDP must require the teacher to make progress toward

individual development goals within a specified period of time not to exceed 180 days.

3. The annual year-end performance evaluation must be based upon multiple classroom observations and include an assessment of the tenured teacher's progress in meeting the goals of his or her IDP, along with the requirements of Section 1249 of the Revised School Code, which are discussed below. See Part II, Section C (pages 5-8) below.
- H. Tenured teachers no longer have rights to teaching positions held by probationary teachers for which the tenured teacher is certified and qualified under the Teacher Tenure Act. In fact, a probationary teacher who is rated as "effective" or "highly effective" on his or her most recent annual year-end performance evaluation is not subject to being displaced by a tenured teacher solely because of tenure status.
- I. A school administrator no longer can obtain tenure status as an administrator, but continues to have the right to obtain tenure status as an active classroom teacher.

II. CHANGES TO THE REVISED SCHOOL CODE (PA 102)

- A. Although the changes to the Revised School Code took effect on July 19, 2011, these changes have various implementation dates, as set forth below. These changes do not affect ESP or higher education members.
- B. School boards must develop policies regarding certain specified personnel decisions that are now prohibited subjects of bargaining.
 1. These policies apply only to teachers covered by the Teacher Tenure Act. Thus, they do not apply to employees of public school academies or to social workers, school psychologists, speech therapists, or any other school employees not covered by the Tenure Act in traditional public schools.
 2. These policies do not apply when there was a collective bargaining agreement in effect on July 19, 2011, if the collective bargaining agreement prevents compliance with such a policy. In such case, these policies do not apply until after the expiration of that collective bargaining agreement.
 3. The policies involve personnel decisions that arise out of the following:

- a. A staffing or program reduction or any other personnel action resulting in the elimination of a position.
 - b. A recall from a staffing or program reduction or any other personnel action resulting in the elimination of a position.
 - c. Hiring after a staffing or program reduction or any other personnel action resulting in the elimination of the position.
 4. The policy to be adopted by the school board may not provide that length of service or tenure status is the primary or determining factor in a personnel decision, unless all other relevant factors are equal.
 5. The policy must be based on retaining effective teachers. A teacher rated as "ineffective" may not be retained over another teacher who is rated as "minimally effective," "effective," or "highly effective."
 6. The policy must be based on effectiveness, where a majority factor must be individual performance, and other factors may include significant accomplishments and contributions and relevant special training. Individual performance shall be determined by at least the following:
 - a. Evidence of student growth, which must be the predominant factor.
 - b. Demonstrated pedagogical skills.
 - c. Classroom management.
 - d. Attendance and disciplinary record.
 7. If a teacher brings a legal action against a school district for violating its adopted policy to the detriment of that teacher, the teacher's sole remedy is an order of reinstatement commencing 30 days after a decision by a court of competent jurisdiction. The remedy shall not include lost wages, lost benefits, or any other economic damages.
- C. Pursuant to amended Section 1249 of the Revised School Code, school boards and boards of public school academies are granted the authority to develop performance evaluation systems for teachers and school administrators, which now are prohibited subjects of bargaining.

1. By September 1, 2011, a school board or public school academy must adopt and implement for all teachers and school administrators a rigorous, transparent, and fair performance evaluation system. The performance evaluation system must rate teachers and certain school administrators as "highly effective," "effective," "minimally effective," and "ineffective."
2. Beginning with the 2013-2014 school year, the performance evaluation system must include at least an annual year-end evaluation for all teachers. Student growth and assessment data must be a factor in the year-end evaluation as follows:
 - a. For the 2013-2014 school year, at least 25% of the year-end evaluation.
 - b. For the 2014-2015 school year, at least 40% of the year-end evaluation.
 - c. Beginning with the 2015-2016 school year and thereafter, at least 50% of the year-end evaluation.
3. If there are student growth and assessment data available for a teacher for at least three school years, the annual year-end evaluation must be based upon the most recent three consecutive school year data. If there are not three school years of student growth and assessment data available for the teacher, the annual year-end evaluation must be based on all student growth and assessment data available for the teacher.
4. The annual year-end evaluation must include specific performance goals to improve effectiveness for the next school year, which are developed by the school administrator in consultation with the teacher, and recommended training identified by the school administrator in consultation with the teacher.
5. A midyear progress report must be provided to all first year probationary teachers and any other teacher who received a rating of "minimally effective" or "ineffective" on his or her most recent year-end evaluation. The midyear progress report must:
 - a. Be based at least in part on student achievement.
 - b. Be aligned with the teacher's IDP.
 - c. Include specific performance goals for the remainder of the school year and any recommended training.

- d. Include a written improvement plan developed by the school administrator in consultation with the teacher designed to assist the teacher to improve his or her rating.
6. The performance evaluation system must include classroom observations.
 - a. The manner in which a classroom observation is conducted shall be set forth in writing.
 - b. The classroom observation must include a review of the teacher's lesson plan, the state curriculum standard being used in the lesson, and a review of pupil engagement in the lesson.
 - c. The classroom observation need not be for an entire class period.
 - d. There must be multiple classroom observations of every teacher who has not received a rating of "effective" or "highly effective" on his or her two most recent annual year-end evaluations.
7. The performance evaluation system may exclude student growth data for a particular pupil for a school year upon the recommendation of the school administrator conducting the year-end evaluation and the approval of the superintendent.
8. The performance evaluation system shall provide that if a teacher is rated as "highly effective" on three consecutive annual year-end evaluations, the school district may choose to conduct a year-end evaluation biennially. However, if the teacher is not rated as "highly effective" on one of these biennial year-end evaluations, the teacher shall again be provided with annual year-end evaluations.
9. The performance evaluation system shall provide for teachers who are not on probation and who are rated as "ineffective" on an annual year-end evaluation the right to request a review of the evaluation and rating by the school district superintendent. The teacher must make the request within 20 days of being informed of the rating and the superintendent shall review the evaluation and rating and make any modifications as appropriate. However the performance evaluation system shall not allow for a review more than twice in a three-school-year period.

10. The performance evaluation system shall provide that if a teacher is rated as "ineffective" on three consecutive annual year-end evaluations, the school district shall dismiss the teacher from employment. This provision does not affect the ability of the school board to otherwise dismiss an ineffective teacher.
- D. Beginning with the 2013-2014 school year, a school board must have a performance evaluation system for building-level school administrators and for central office-level school administrators who are regularly involved in instructional matters that includes requirements similar to the performance evaluation system for teachers.
 - E. A school district or public school academy is not required to adopt an evaluation system for teachers or school administrators that meets all of the requirements set forth in C and D above, if the school district or public school academy had in effect on July 19, 2011, a performance evaluation system that meets all of the following:
 1. The most significant portion of the evaluation is based on student growth and assessment data.
 2. The system uses research-based measures to determine student growth.
 3. The system determines professional competence through multiple direct observations of classroom and professional practices throughout the school year.
 4. Teacher effectiveness ratings are factored into teacher retention, promotion, and termination decisions.
 5. Evaluation results are used to inform professional development for the following year.
 6. The system provides that teachers and school administrators are evaluated at least annually.
 7. The school district or public school academy notifies the Governor's Council by November 1, 2011, that it is exempt from the evaluation system and posts a description of its evaluation system on its website.
 - F. A school district or public school academy is not required to adopt an evaluation system for teachers or school administrators that meets all of the requirements in paragraphs C and D above, if it adopts a performance evaluation system after July 19, 2011, that meets all of the following:

1. The performance evaluation system implemented is identical to the performance evaluation system of a public school that is exempt under paragraph E above.
 2. The school district or public school academy posts a description of the evaluation system on its website.
- G. These performance evaluation requirements do not apply when there was a collective bargaining agreement in effect on July 19, 2011, if the collective bargaining agreement prevents compliance with those requirements. In such case, these requirements do not apply until after the expiration of that collective bargaining agreement.
- H. There is also created a Governor's Council on Educator Effectiveness that must submit a report to the State Board of Education, the Governor, and the Legislature not later than April 30, 2012.
1. The Governor's Council will have five voting members: three shall be appointed by the Governor, one by the Senate majority leader, and one by the Speaker of the House of Representatives. Thus, all voting members of the Council will be appointed by Republicans. The Superintendent of Public Instruction or his or her designee will serve as a nonvoting member of the Council.
 2. The Governor shall appoint an advisory committee to the Council which will provide input on the Council's recommendations. The advisory committee shall consist of public school teachers, public school administrators, and parents of public school pupils.
 3. The report of the Governor's Council must include recommendations on all of the following:
 - a. A student growth and assessment tool.
 - b. A state evaluation tool for teachers.
 - c. A state evaluation tool for school administrators.
 - d. Recommended parameters for the "effectiveness rating" categories for teachers and school administrators.
 - e. Recommended changes in the requirements for a professional education teaching certificate that will ensure that a teacher is not required to complete additional

postsecondary credit hours beyond the credit hours required for a provisional teaching certificate.

- f. A process for evaluating and approving local evaluation tools for teachers and school administrators.
- I. Beginning with the 2015-2016 school year, a school board must notify by July 15 the parent or legal guardian of any student assigned to be taught by a teacher who has been rated as "ineffective" on his or her two most recent annual year-end evaluations.

III. CHANGES TO THE PUBLIC EMPLOYMENT RELATIONS ACT (PA 103)

- A. There are several additional prohibited subjects of bargaining. These changes took effect on July 19, 2011. These additional prohibited subjects of bargaining do not impact support staff in public schools.
- B. Prohibited subjects of bargaining may be discussed at the bargaining table, but are within the authority of the school board to decide.
- C. The new prohibited subjects of bargaining are:
 - 1. Any decision made by a school board regarding the assignment of teachers or the impact of that decision on an individual employee. It continues to be a mandatory topic of bargaining to bargain over the procedure for the assignment of teachers in situations unrelated to either reductions in force or recalls from reductions in force.
 - 2. Decisions about school board policies concerning personnel decisions for teachers covered by the Teacher Tenure Act involving a reduction in force, the elimination of a position, or a recall from a reduction in force; any decision made by a school board pursuant to those policies; or the impact of those decisions on an individual teacher.
 - 3. Decisions relating to the school board's performance evaluation system for teachers; decisions regarding the content of a performance evaluation for teachers; or the impact of those decisions on an individual teacher.
 - 4. For teachers covered by the Teacher Tenure Act, decisions about the development, content, standards, procedures, adoption, and implementation of a policy regarding discharge or discipline of a teacher; decisions concerning the discharge or discipline of the teacher; or the impact of those decisions on an individual teacher. A school board may not adopt, implement, or maintain a policy for

the discharge or discipline of a teacher covered by the Tenure Act that includes a standard for discharge or discipline different than the arbitrary and capricious standard under the Teacher Tenure Act.

5. Decisions about the format, timing, or number of classroom observations of a probationary teacher; decisions concerning the classroom observations of an individual teacher; or the impact of those decisions on an individual teacher.
6. Decisions about policies concerning pay for performance for teachers, how a teacher's performance evaluation is used to determine pay-for-performance, decisions concerning pay-for-performance for an individual teacher, or the impact of those decisions on an individual teacher.
7. Decisions regarding the notification of parents and legal guardians that a pupil will be taught by a teacher who has been rated "ineffective" on two consecutive year-end evaluations.

PROHIBITED SUBJECTS OF BARGAINING UNDER PUBLIC ACT 103

IMPACT ON COLLECTIVE BARGAINING AND FACT FINDING



FACT FINDER AND ACT 312 ARBITRATOR TRAINING

Thursday, October 13, 2011

Presented By:
Ann L. VanderLaan
(248) 988-587
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These materials are intended to provide general information and do not constitute legal or other professional advice for any specific situation or create an attorney-client relationship.

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7 NEW PROHIBITED SUBJECTS

- Teacher Placement, 15(3)(j)
- Layoff and Recall of Teachers, 15(3)(k)
- Teacher Evaluation, 15(3)(l)
- Discipline and Dismissal of Tenured Teachers, 15(3)(m)
- Observations of Probationary Teachers, 15(3)(n)
- "Merit Pay," 15(3)(o)
- Notice to Parents Regarding Ineffective Teachers Begins 2015-2016, 15(3)(p)

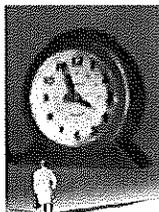
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ISSUES LEFT FOR BARGAINING/FACT-FINDING

Money, Time and Power.



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- **Wages**
- **Salary Schedules**
- **Incorporating Job Performance and Compensation, 380.1250**
- **When Do Step Increases Begin?**

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INSURANCE

- Carrier, type and level of benefits, coverages
- Will board opt for 80/20 share?
- How will 80/20 share be allocated?
- Eligibility
- Cash in lieu of increases
- FSA etc., contributions
- Short term disability
- PPACA impacts



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OTHER BENEFITS

Benefits without FICA and/or MPSERS roll up:

- 403b contributions
- Tuition reimbursement
- Wellness riders or programs
- Sick bank
- Reimbursement cost of certificate/license

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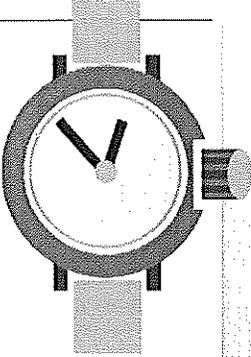
MORE MONEY IN EMPLOYEES' POCKETS

- Day care for employees' children
- Discounts on meals in school cafeteria
- Reimbursement for classroom supplies
- For professional staff that are involved – i.e., special education – financial incentives for completing record keeping for Medicaid reimbursement

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TIME

- Workload Issues/Calendar
- Length of School Year
- Length of Work Day
- Number of Class Periods Each Day
- Prep Time/Breaks
- Hours/What Counts Towards Instructional Time?
- Professional Development
- Comp time for IEPs or After School Obligations
- Overtime Pay
- Class Size
- Overload Pay



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1280c ISSUES FOR FAILING SCHOOLS

- Extended Learning Time
- Professional Development
- More stringent student growth components?
More than 25/40/50?
- Compensation for extra effort

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POWER

- Assignment of students to classes
- Timelines for completing child study referrals or IPEs to ensure accommodations provided to aid in learning and thus achievement results
- Ratios of sp ed/bilingual/free and reduced/remedial needs/those retaking a class
- Access to lesson plans

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IMPACTS

Where PERA does not prohibit negotiation of impact of a particular decision?

- 15(3)(a) – Policyholder; start date
- SIT Committees not formed under section 1277, but see PERA section 15(6)
- Schools of Choice
- Schools chartered by board, but see PERA section 15(6)
- Volunteers
- Tenure Act Reforms

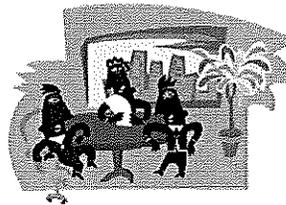
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MORE "DISCUSSION"

- May discuss prohibited subjects
- More "consultation"



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FACT-FINDERS

- May be more involved in "nuts and bolts" of educational process
 - Workload
 - Preparation time
 - Number of class periods
- Wages/Additional monetary benefits to offset mandatory health care premiums
- Health care premiums per bargaining unit
 - 80/20 – 90/10 – 70/30
- Fact Finding may shift away from teachers and involve non-instructional professionals and support staff
 - Counselors
 - Psychologists
 - Social Workers
 - Occupational and Physical Therapists
 - Para-Professionals
 - Secretarial

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QUESTIONS



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- It contains general recommendations and should not be relied upon for any specific purpose without consultation with legal counsel or other professionals and in the context of specific facts and circumstances.

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D

- MERS' SUSTAINABLE RETIREMENT HANDOUTS
- HEALTH CARE REFORM 2011 DEVELOPMENTS
- AUDITS & ACCURACY ANALYZING THE CURRENT FINANCIAL PICTURE (D. Helisek)



supports
**sustainable
retirement**

Supports
and
sustains
jobs in
Michigan

Provides
modest,
stable
income
for retirees

Provides
sound
**fiscal
practices**

MERS Supports Sustainable Retirement

The buck stays in Michigan

Supporting and sustaining jobs that fuel Michigan's economy

- The buck stays in Michigan — **91%** of MERS 27,150 retirees remain in the state
- MERS retirees contribute over **\$451 million** annually to Michigan's economy
- Public pensions* in Michigan directly – or indirectly – support nearly **57,300 jobs**
- Nearly **250,000** public retirees live in Michigan communities
- Pensions are **automatic stabilizers** for the economy. Steady income streams result in steady spending; downturns in the market result in retirees holding onto assets and interrupting spending patterns due to uncertainty of the economy

Modest, stable incomes for retirees

Reducing reliance on public assistance

- In 2009, the average pension payment for a MERS retiree was **\$16,991**
- Sustainable retirement means **1.72 million** fewer poor households
- **1.35 million** fewer households receiving means-tested public assistance
- **87%** of Americans believe all workers should have a pension so they can be self-reliant in retirement
- **83%** of Americans are concerned about their ability to achieve a secure retirement
- **51%** of Americans indicate that today's retirement system is worse than the system available to earlier generations
- Older households without retirement income are **6 times** more likely to live in poverty than those with pensions
- A sustainable retirement would save **\$7.3 billion** in public assistance expenditures

MERS helps municipalities with our sound fiscal practices

Promoting adequate and sustainable retirements

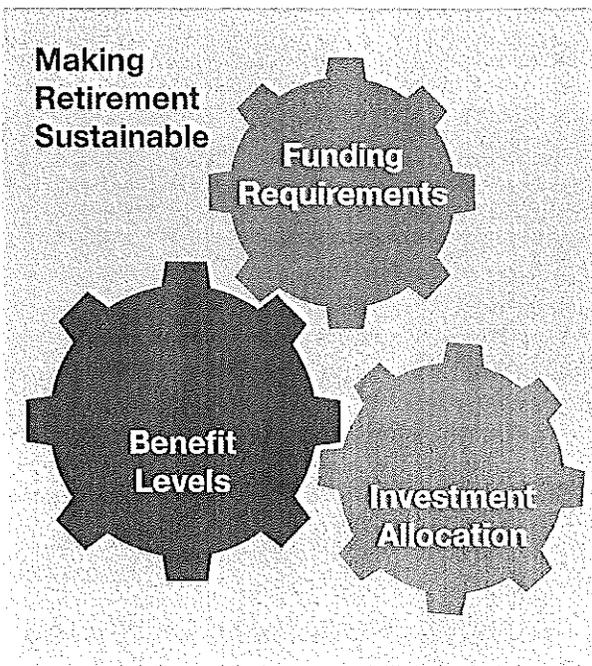
- **64¢** of every dollar paid in Michigan public pensions* comes from investment earnings, not taxpayer dollars. The remaining 36¢ comes from shared contributions between employers and employees
- MERS long-term returns have **outperformed** stated benchmarks
- MERS enforces measures that **restrict** the spiking of final compensation used for retirement purposes
- A municipality must be **80%** funded in order to increase or change their benefits
- With our large pool of trust assets, we are able to negotiate **lower** administrative costs and investment fees than a single municipality can get on its own

* Represents the pension payments of the State of Michigan's Office of Retirement Services and MERS retirees only.

How to Create Sustainable Retirement Reform Through Fiscal Responsibility

MERS supports Michigan communities by:

- Protecting the long-term financial position of the system
- Protecting benefit levels for retirees so they may remain self-reliant in retirement and positively affect the Michigan economy
- Supporting the rebuilding of a financially healthy Michigan
- Promoting viable options and solutions for sustainable retirement for all public workers
- Providing best practices for other retirement systems and the private sector
- Advocating for reform through fiscal responsibility
 - Funding requirements
 - Benefit levels and final average compensation limitations
 - Investment allocation and structure



About MERS

The Municipal Employees' Retirement System (MERS) of Michigan is a statewide nonprofit organization that has helped provide safe, secure retirement plans for municipal employees for more than 65 years.

Today, we proudly count more than 86,000 active and retired members in more than 750 municipalities, many of them your friends and family, your neighbors or coworkers. Our members are police officers and pipe fitters, lawyers, librarians and more, located everywhere from Menominee to Marshall, and plenty in between.

This publication contains a summary description of MERS benefits, policies or procedures. MERS has made every effort to ensure that the information provided is accurate and up to date as of 04/14/11. If this publication conflicts with the relevant provisions of the Plan Document, the Plan Document Controls. MERS, as a governmental plan, is exempted by state and federal law from registration with the SEC. However, it employs registered investment advisors to manage the trust fund in compliance with Michigan Public Employee Retirement System Investment Act. Past performance is not a guarantee of future returns. Please make independent investment decisions carefully and seek the assistance of independent experts when appropriate.

Suggested Readings

The Top Ten Advantages of Maintaining Defined Benefit Pensions

National Conference on Public Employee Retirement Systems, May 2007 info@NCPERS.org

"DB plans help sustain state and local economies by providing adequate and steady retirement benefits for a significant portion of the workforce."

Strategists: Don't Cook the DB Goose

Plansponsor, M Barton Waring, Barclays Global Investors and Laurence Siegel and Ford Foundation, www.pionline.com

"Four reasons DB plans are more cost effective and efficient than DC plans"

State and Local Government Defined Benefit Retirement Plans

National Association of State Retirement Administrators, Public Fund Survey of NASRA/NCTR, www.nasra.org, www.nctr.org and U.S. Census Bureau

"The Bulk of Public Pension Benefit Funding is NOT Shouldered by Taxpayers – investment earnings make up 60% of public pension plan revenues."

Confronting Pension Envy

National Institute on Retirement Security, November 2009, webinar, www.nirsonline.org

"83% of Americans are concerned about their ability to achieve a secure retirement"

A Better Bang for the Buck

National Institute on Retirement Security, August 2008, www.nirsonline.org

"The embedded economic efficiencies of DB plans make them nearly half the cost of DC plans, or a 46 percent cost savings."

Pensions are a Proven System

American Federation of State, County and Municipal Employees, www.afscme.org

"81 of the Fortune 100 companies offer a traditional pension plan, as do 360 of the Fortune 500 companies."

Economic Impacts of Michigan's Municipal Employee Retirement System & Office of Retirement Services

Wayne State University, Center for Urban Studies, February 2010

"The impacts from MERS DB, MERS DC, ORS DB and ORS DC yielded roughly \$6.44 billion in Gross Regional Output at the state level. This is estimated to support 57,291 jobs throughout the state of Michigan."

State and Local Government Retiree Benefits, Current Funded Status of Pension and Health Benefits

United States Government Accountability Office, Report to the Committee on Finance, U.S. Senate, January 2008

"State and local government pension plans have enough invested resources set aside to keep up with the benefits they are scheduled to pay over the next several decades."

Fall 2010 401(K) Retirement Readiness Study

PR Newswire, Nyhart actuarial and employee benefits consulting firm, December 1, 2010

"81% of employees 18 or older will not be able to afford to retire by the age of 65."

Out of Balance? Comparing Public and Private Sector Compensation Over 20 Years

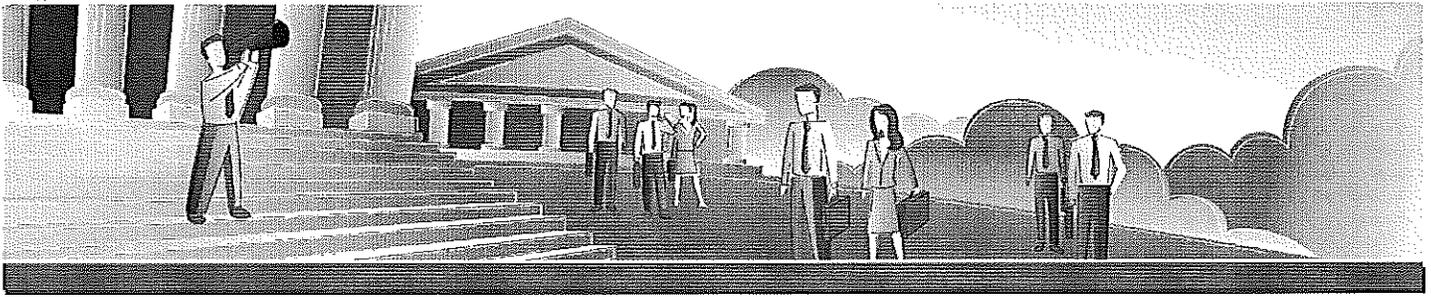
Center for State and Local Government Excellence and National Institute on Retirement Security, April 28, 2010

"28% of state and local workers are not eligible for Social Security."

Retirement Income Preparation and Future Prospects

Employee Benefit Research Institute, July 2010, www.ebri.org

"47.2% of Early Baby Boomers at risk of not having sufficient resources to pay for basic retirement expenditures and uninsured health care costs"



LEGISLATIVE BRIEF

Health Care Reform: Developments in 2011

The Patient Protection and Affordable Care Act (PPACA) makes extensive changes to the U.S. health care system with respect to the delivery of health care, consumer protections and coverage options. Some provisions are effective now, while others become effective years from now.

Many of PPACA's reforms require agency guidance to be implemented. Since PPACA became law in 2010, the Departments of Labor (DOL), Health and Human Services (HHS) and Treasury (collectively, the Departments) have been regularly issuing guidance to implement PPACA's reforms.

In addition, PPACA is a "hot button" issue that has been the subject of congressional and court action since its enactment. While congressional attempts to entirely repeal PPACA have been unsuccessful, two individual components of the law were repealed through the legislative process. In addition, a number of courts have addressed the constitutionality of PPACA, and reached different conclusions.

This Cornerstone Group Legislative Brief outlines PPACA developments that have taken place in 2011. Please read below for more information.

REPORTING REQUIREMENTS

W-2 Reporting

PPACA requires employers to report the aggregate cost of employer-sponsored group health plan coverage on their employees' Forms W-2. The purpose of the reporting requirement is to provide information to employees regarding how much their health coverage costs. This requirement was originally effective for the 2011 tax year and the W-2 Forms that would be provided in January 2012. However, in 2010, the IRS announced that 2011 reporting would be optional for all employers.

In March 2011, the IRS further delayed the reporting requirement for small employers (those who file fewer than 250 Forms W-2) by making it **optional** for these employers until further guidance is issued. For the larger employers, the requirement will be **mandatory for the 2012 Forms W-2** (that must be issued in January 2013).

1099 Reporting

PPACA would have expanded 1099 reporting by requiring businesses to file a Form 1099 for any company from which it bought more than \$600 in goods or services in a single year. This requirement was scheduled to go into effect in 2012. Although not directly related to health care, the expanded 1099 reporting requirement was designed to raise money for the health care reform plan as well as improve tax compliance. In April 2011, PPACA's expanded 1099 reporting requirement was **repealed** by Congress.

Health Care Reform: Developments in 2011

PREVENTIVE CARE FOR WOMEN

Under PPACA, non-grandfathered health plans must cover preventive health services without imposing cost-sharing requirements for the services. PPACA's preventive care mandate is generally effective for plan years beginning on or after **Sept. 23, 2010**. In August 2011, HHS issued new preventive care guidelines for women. These new guidelines, which are effective for plan years beginning on or after **Aug. 1, 2012**, require non-grandfathered health plans to cover women's preventive health services (such as well-woman visits, breastfeeding support, domestic violence screening and contraceptives) without charging a copayment, deductible or coinsurance.

SUMMARY OF BENEFITS AND COVERAGE

PPACA requires health plans and health insurance issuers to begin providing a summary of benefits and coverage no later than **March 23, 2012**. Both non-grandfathered and grandfathered plans will need to provide the summary. The summary is intended to be a concise document providing simple and consistent information about health plan benefits and coverage in plain language. Its purpose is to help health plan consumers better understand the coverage they have and, when selecting new coverage, to help them make apples-to-apples comparisons of different coverage options.

Employers and health insurance issuers have been waiting on the Departments to issue guidance on specific requirements for the summary. In August 2011, the Departments announced proposed regulations for the SBC. The proposed regulations include guidance on:

- Providing the SBC, including who must provide the SBC and timing requirements; and
- Preparing the SBC, such as content, appearance and language requirements.

The Departments issued a proposed template for the SBC, including a glossary of terms, and additional instructions and sample language for completing the proposed template. The proposed guidance is **not final**, although it does provide information on the standards the Departments are considering for the summary.

CLAIMS AND APPEALS REQUIREMENTS

Under PPACA, non-grandfathered group health plans and health insurance issuers must adopt an improved internal claims and appeal process and follow minimum requirements for external review, effective for plan years beginning on or after **Sept. 23, 2010**. In June 2011, the Departments issued amended guidance to their claims and appeals regulations to assist health plans and issuers achieve full compliance with the new claims and appeals requirements.

Among other changes, the amended guidance:

- Made significant changes to the Department's original claims and appeals regulations, including reverting back to a 72-hour time limit for urgent health care claims and simplifying the criteria for determining when notice must be provided in a culturally and linguistically appropriate manner;
- Extended the transition period for state external review processes through Dec. 31, 2011 and clarified when the federal standard of review will apply to external reviews; and
- Temporarily narrowed the scope of claims eligible for external review under a federal external review process.

In connection with these changes, the Departments also issued updated model claims and appeals notices.

EARLY RETIREE REINSURANCE PROGRAM

Health Care Reform: Developments in 2011

PPACA established the Early Retiree Reinsurance Program (ERRP) to provide reimbursement to eligible employers (and employment-based plans) for part of the cost of providing health care coverage to early retirees and their families. The ERRP has \$5 billion in funding and is set to expire no later than Jan. 1, 2014. To participate in the ERRP, the plan must submit an application to HHS. Once certified to participate, the plan is eligible to submit claims for reimbursement. In April 2011, HHS announced that it would no longer accept applications for the ERRP after **May 5, 2011**, consistent with PPACA's provisions regarding the availability of funding. Employers and plans that were approved to participate in the ERRP before the application deadline may continue to submit claims for reimbursement.

ANNUAL LIMIT WAIVERS

PPACA generally prohibits lifetime or annual limits on the dollar value of essential health benefits, effective for plan years beginning on or after **Sept. 23, 2010**. Although annual limits are generally prohibited, "restricted annual limits" are permitted for essential health benefits for plan years beginning before **Jan. 1, 2014**. In 2010, HHS released guidance establishing a waiver program for the restricted annual limit requirements.

In June 2011, HHS issued new guidance on the waiver program. Under the new guidance, the waiver program closed to applications effective **Sept. 22, 2011**. Under HHS's original guidance on the waiver program, plans were required to reapply for the annual limit waiver every year until 2014 when all annual limits will be prohibited. Under the new guidance, reapplication is not required; the waivers will generally apply until the first plan year beginning on or after Jan. 1, 2014.

Plans and issuers that received waivers must provide a notice to participants annually. In addition, plans and issuers that received waivers must provide HHS with annual updates and must retain records relating to the waivers.

INSURANCE RATE REVIEWS

PPACA required HHS to establish a process for the annual review of "unreasonable increases in premiums for health insurance coverage." In May 2011, HHS issued a final regulation aimed at controlling large health insurance premium increases. The rule provides that:

- Effective **Sept. 1, 2011**, rate increases of 10 percent or more by insurers in the small group and individual markets must be reviewed by state or federal officials;
- Starting **Sept. 1, 2012**, the 10 percent threshold will be replaced with a state-specific threshold to reflect insurance and health care cost trends particular to that state; and
- Insurance companies will be required to justify significant rate increases and provide information to consumers about the reasons for the increases.

Grandfathered plans and excepted benefits (such as separate dental-only and vision-only plans) do not have to meet these requirements.

HEALTH INSURANCE EXCHANGES

PPACA requires states to establish health insurance exchanges (Exchanges) to provide a competitive marketplace where individuals and small businesses will be able to purchase affordable private health insurance coverage, effective Jan. 1, 2014. Rules related to some aspects of the Exchanges have been proposed, but are **not yet final**.

On **July 11, 2011**, HHS issued **proposed regulations** regarding the establishment of Exchanges and Qualified Health Plans, as well as proposed standards related to reinsurance, risk corridors and risk adjustment. The proposed guidance is designed to help states design and implement their Exchanges in two key areas:

Health Care Reform: Developments in 2011

- Setting standards for establishing the Exchanges, setting up a Small Business Health Options Program (SHOP), performing the basic functions of an Exchange and certifying health plans for participation in the Exchanges; and
- Ensuring premium stability for plans and enrollees in the Exchanges.

On **Aug. 12, 2011**, HHS and Treasury released three additional proposed rules related to the Exchanges:

- **Exchange Eligibility and Employer Standards:** An HHS proposed rule details the standards and process for enrolling in qualified health plans and insurance affordability programs. It also outlines basic standards for employer participation in SHOP.
- **Health Insurance Premium Tax Credit:** Treasury Department proposed regulations lay out how individuals and families will receive premium tax credits to help defray insurance costs.
- **Medicaid Eligibility:** Another HHS proposed rule expands and simplifies Medicaid eligibility and coordinates Medicaid and CHIP with the new Exchanges.

FREE CHOICE VOUCHERS

Under PPACA, "offering employers" would have been required to provide free choice vouchers to "qualified employees" to purchase health care coverage through a state exchange beginning in 2014. An offering employer was one that offers minimum essential coverage to employees and pays any portion of the premium. A qualified employee was one who did not participate in the employer's health plan and whose household income and health plan contribution amount satisfied certain percentages. The voucher was to be equal to the monthly amount that the employer would have contributed toward the plan for which the employer pays the largest portion of plan costs, for either self or, if elected by the employee, family coverage. In April 2011, PPACA's free-choice voucher provision was **repealed** by Congress.

COURT DECISIONS

A number of legal challenges to the health care reform law have been filed in federal court since the law was passed in 2010. While some of the challenges have been decided based on procedural grounds, the main substantive controversy has been whether Congress had the constitutional authority to pass the individual mandate under health care reform. The court rulings, to date, are split. Some courts have upheld the law as constitutional, while others have concluded that a portion of the law, or the entire law, is unconstitutional.

In June 2011, the 6th Circuit upheld the constitutionality of the individual mandate. However, in August 2011, the 11th Circuit ruled that the health care reform law's individual mandate is unconstitutional. In early September 2011, the 4th Circuit dismissed challenges to the health care reform law's constitutionality based on procedural grounds, finding that the plaintiffs, including the state of Virginia, did not have standing to sue.

Now that federal appeals courts have reached differing conclusions on the constitutionality of the health care reform law, the issue may proceed to the U.S. Supreme Court. It is likely that PPACA's constitutionality will ultimately be settled by the Supreme Court.

For More information on **Health Care Reform** and its impact please contact **Mark Manquen** at 1.248.641.2786

Cornerstone Watch on Healthcare

Latest News & Analysis on Municipal Health Plans



Publicly Funded Health Insurance Contribution Act (PA 152)

On September 27, 2011 Michigan's Governor Snyder signed into law The "Publicly Funded Health Insurance Contribution Act" (PA 152). The Act places limitations on the amount of money public employers can contribute toward the medical benefits provided to their employees.

According to the new legislation, except as otherwise provided in this Act, a **public employer** that offers or contributes to a **medical benefit plan** for its employees or elected public officials shall pay no more of the annual costs using illustrative and premium rates (plus any payments for reimbursements of co-pays, deductibles, or payments into health savings accounts, flexible spending accounts, or similar accounts) used for health care costs, than would be allowed under one of the two funding level mandates.

The two funding level mandates in the bill that public employers can use are:

- An annual aggregate "hard-cap" dollar amount based on the summation of \$15,000 per family coverage, \$11,000 per two-person coverage, and \$5,500 per individual coverage; or
- An 80% annual aggregate employers spending limit for health care costs, with non-grandfathered employees required to pay the additional 20 percent.

DEFINITIONS:

A "Medical benefit plan" is defined as a plan established by	A Public Employer is defined as
An Insurance carrier	State or Local Government, Certain Authorities
A VEBA (Voluntary Employees Benefit Assoc.)	School Districts
1 or more public employers	Public Colleges or Universities

Compliance with the funding limitations would affect all employees under a labor agreement expired as of January 1, 2012 or labor agreement's ratified after September 14, 2011. Employee groups subject to CBA's ratified prior to September 15, 2011 are "grandfathered" under PA 152 until such agreements expire, renew or are extended.

It's important to note that retirees are specifically excluded from PA 152.

If you are interested in more information regarding the **Publicly Funded Health Insurance Contribution Act** please Contact **Mark A. Manquen** at 248.641.2786.

■ Audits and Accurately Analyzing the Current Financial Picture

Presented by David Helisek, CPA

October 13, 2011

Current Situation

- ✓ Difficult State economy leads to lower property taxes, lower state taxes = less money for communities
- ✓ Communities have done some cost-cutting and looked for quick revenue hits
- ✓ Many have used fund balance to get by
- ✓ There have been staff reductions and pay cuts
- ✓ Delayed capital outlay
- ✓ Decrease in certain types of services
- ✓ These moves only go so far and do not always address the magnitude of the issue
- ✓ Elimination of statutory revenue sharing and replacement with Economic Vitality Incentive Program

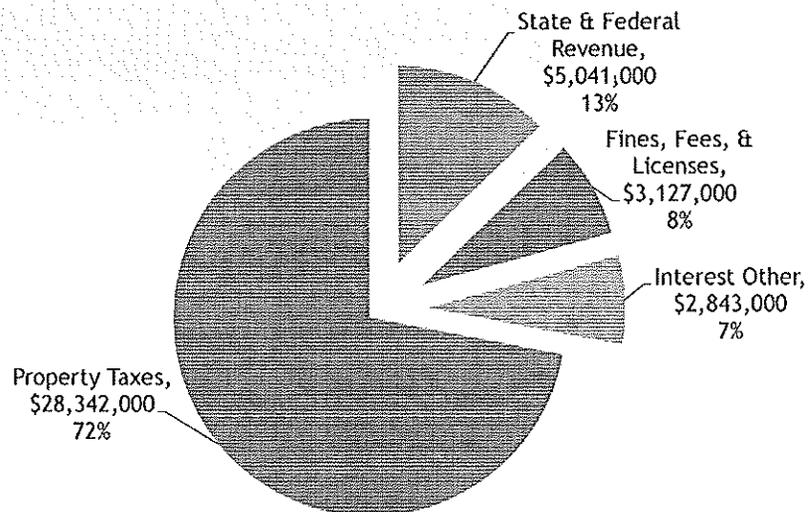
Statewide Economic Factors

Mitchell Bean, Director of the Michigan House Fiscal Agency has authored a presentations entitled "Economic and Revenue Forecasts: Implications for Michigan's Budget" and "Where We Are and How We Got There"

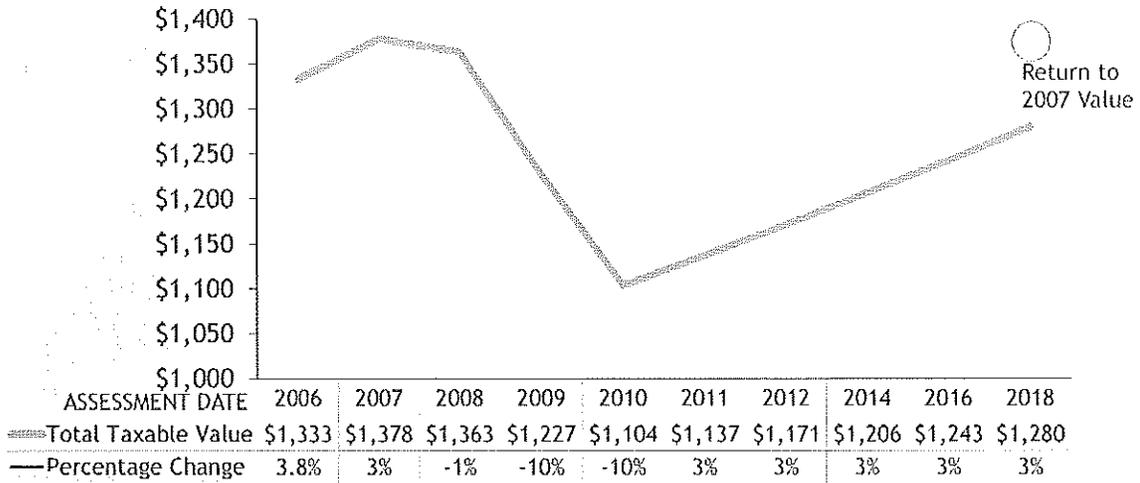
Key points in these presentations:

- Michigan's unemployment rate is 2-3 percentage points higher than the national average
- Tax credits and exemptions are costly and negatively impact state revenues
- Michigan lost 72,000 jobs in 08 and is predicted to lose 193,000 more in 09 and an additional 80,000 in 2010 (Vehicle employment decreased from 346,000 to 127,000 in 9 years)
- Big 3 market share has fallen from 70% to 40%, units sold dropped from 17 million to 10 million in 10 years
- Vehicle employment has dropped from 346,000 jobs in 2000 to 95,000 jobs expected in 2011
- Michigan sales tax revenue is expected to continue to decrease – this is sole source for state revenue sharing

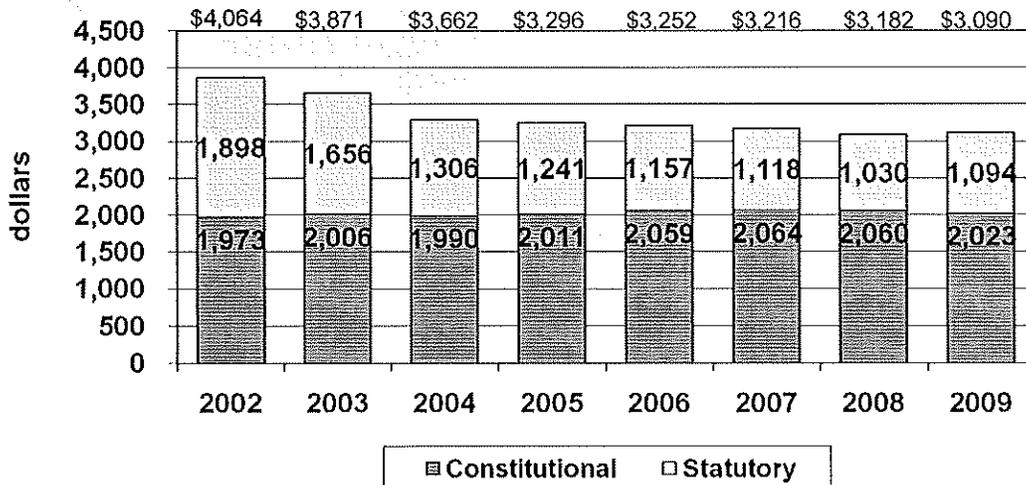
Typical City General Fund Revenue Fiscal Year Ended June 30, 20xx



Typical City Total Taxable Value (in millions) Years Ended June 30



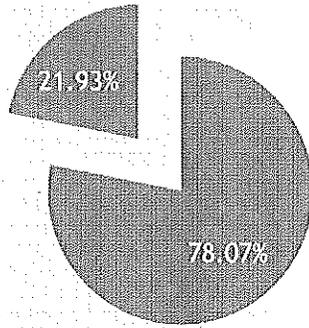
Real-life City State Shared Revenue (in 000's)



Constitutional is the only portion guaranteed.
Statutory, at best, will be two-thirds of 2009 revenue.

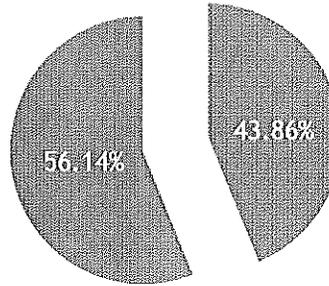
Typical City General Fund Expenditures Years Ended June 30

By Category



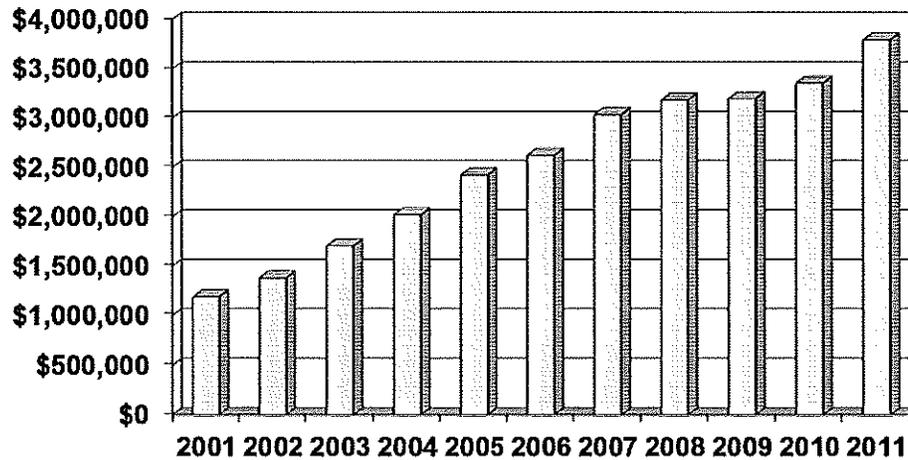
■ Personnel Costs
■ Other

By Activity



■ Public Safety
■ Other

Real-life City Health Care Cost Trends



Active and Retired Employee Health Care Costs

Fund-Based Financial Statements

1. Combined Balance Sheet:

	General Fund	Special Revenue Funds	Agency Funds
Cash			
Investments			
Receivables			
Due from other funds			
Capital assets			
Amounts to be provided			

2. Combined Income statement:

	General Fund	Special Revenue Funds
Revenues:		
State shared revenues	100,000	-
Property taxes	40,000	80,000
Special assessments	10,000	5,000
Interest	5,000	2,000
Total	155,000	87,000
Expenditures:		
Township board	2,000	-
Supervisor	9,500	-
Treasurer	9,200	-
Clerk	9,300	-
Assessor	15,000	-
Planning	2,500	-
Police	-	70,000
Fire	40,000	-
Building inspection	2,000	-
etc...		

3. Budget Statement:

	General Fund			Special Revenue Funds		
	Budget	Actual	Difference	Budget	Actual	Difference
Revenues:						
State shared revenues	92,000	100,000	8,000	-	-	-
Property taxes	39,500	40,000	500	78,000	80,000	2,000
Special assessments	11,200	10,000	(1,200)	5,500	5,000	(500)
Interest	4,500	5,000	500	1,500	2,000	500
Total	147,200	155,000	7,800	85,000	87,000	
Expenditures:						
Township board	2,100	2,000	(100)	-	-	-
Supervisor	10,000	9,500	(500)	-	-	-
Treasurer	10,000	9,200	(800)	-	-	-
Clerk	10,000	9,300	(700)	-	-	-
Assessor	15,000	15,000	-	-	-	-
Planning	3,000	2,500	(500)	-	-	-
Police	-	-	-	68,000	70,000	2,000
Fire	35,000	40,000	5,000	-	-	-
Building inspection	2,000	2,000	-	-	-	-
etc...						

4. Notes to the Financial Statements

Note 1 - Significant accounting policies

The accounting policies of the Township conform to generally accounting policies as prescribed by ...

Financial Statements

- Governmental fund-based statements have a current focus. No long-term assets (fixed assets) or long-term liabilities (bonds, unfunded pension, unfunded OPEB, etc.).
- Focus is on matching expenses with the tax year from which they will be funded.
- 60 day rule - Revenue recognition
- Year-by-year focus
- Not an indicator of overall health

Nonspendable Fund balance:

- Either (a) not in spendable form or (b) legally or contractually required to be maintained intact.
- This would include inventory, prepaids, non-current receivables

Restricted fund balance:

- Same definition as restricted net assets
- Constraints placed on the use of amounts are either:
 - a. Externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or
 - b. Imposed by law through constitutional provisions or enabling legislation.

Enabling Legislation:

Enabling legislation, as the term is used in this Statement, authorizes the government to assess, levy, charge, or otherwise mandate payment of resources (from external resource providers) and includes a *legally enforceable* requirement that those resources be used only for the specific purposes stipulated in the legislation. *Legal enforceability* means that a government can be compelled by an external party – such as citizens, public interest groups, or the judiciary – to use resources created by an enabling legislation only for the purposes specified by the legislation.

GASB 54 Fund Balance Reporting

Unassigned Fund balance:

- Everything else in "unassigned"
- Unassigned should only be reported in the general fund
 - Exception: Negative unassigned fund balance s/b reported in other funds if expenditures incurred for specific purposes exceed amts restricted, committed or assigned to those purposes.

Exhibit 1

Exhibit 1

Fund balances:	General Fund	Major Special Revenue Funds		Major Debt Service Fund	Major Capital Projects Fund	Other Funds
		Highway Fund	School Aid Fund			
Nonspendable:						
Inventory	\$ 125,000	\$ 108,000	\$ 16,000	--	--	--
Permanent fund principal	--	--	--	--	--	\$ 164,000
Restricted for:						
Social services	240,000	--	--	--	--	--
Parks and recreation	80,000	--	--	--	--	--
Education	55,000	--	--	--	--	--
Highways	--	--	--	--	\$ 444,000	--
Road surface repairs	--	24,000	--	--	--	--
Debt service reserve	--	--	--	\$ 206,000	--	--
School construction	--	--	--	--	301,000	--
Law enforcement	--	--	--	--	--	214,000
Other capital projects	--	--	--	--	51,000	--
Other purposes	30,000	--	--	--	--	--
Committed to:						
Zoning board	16,000	--	--	--	--	--
Economic stabilization	210,000	--	--	--	--	--
Homeland security	110,000	--	--	--	--	--
Education	50,000	--	103,000	--	--	--
Health and welfare	75,000	--	--	--	--	--
Assigned to:						
Parks and recreation	50,000	--	--	--	--	--
Library acquisitions	50,000	--	--	--	--	--
Highway resurfacing	--	253,000	--	--	--	--
Debt service	--	--	--	306,000	--	--
Public pool	--	--	--	--	121,000	--
City Hall renovation	--	--	--	--	80,000	--
Other capital projects	50,000	--	--	--	471,000	--
Other purposes	80,000	--	73,000	--	--	176,000
Unassigned:	625,000	--	--	--	--	--
Total fund balances	\$ 1,748,000	\$ 390,000	\$ 192,000	\$ 512,000	\$ 1,448,000	\$ 554,000

This level of detail is not required for display on the face of the balance sheet. Fund balance categories and classifications are presented in detail or in the aggregate if sufficient detail is provided in the notes to the financial statements.

Note disclosures:

- Key info about stabilization arrangements
- Details about restricted, committed or assigned f.b. if not apparent on the face of the statements
- The decision-making authority and formal action, if any, that results in commitments of fund balance
- The bodies or persons with the authority to express intended uses of resources that result in assigned fund balance
- The order in which a government assumes restricted, committed, assigned, and unassigned amounts are spent when amounts in more than one classification are available for a particular purpose
- Minimum fund balance policies, if a government has one
- The purpose for each major special revenue fund, identifying which revenues and other resources are reported in each of those funds.

E

- SPEAKERS' BIOGRAPHIES

Tom Barnes

Tom Barnes has been a MERC arbitrator for contract and Act 312 cases for over 20 years. He began his career working for a consulting firm to unions organizing hospital employees and bargaining their labor contracts. He was a partner with the Varnum firm in the labor and employment area for 39 years negotiating many labor agreements and arbitrating labor disputes. On January 1, 2011, he became a full time arbitrator and is on the AAA and FMCS labor arbitration panels and on the AAA Employment Disputes Panel. J.D. Wayne Law School (Editor in Chief, Wayne Law Review). B.A.'s in Accounting and Political Science, Michigan State University. Honors include Fellow, College of Labor and Employment Lawyers; Who's Who Worldwide and U.S.; Fellow, State Bar of Michigan; Member, Institute for Continuing Legal Education (ICLE) Planning and Strategic Direction Committees; Best Lawyers in America for past 10 years; Michigan 100 Superlawyers; Best Lawyers in West Michigan; 2011 recipient of the Michigan Bar Labor and Employment Section Distinguished Service Award.

Mary A. Bedikian

Mary A. Bedikian is Professor of Law in Residence and Director of the Alternative Dispute Resolution Program at Michigan State University College of Law, where she teaches negotiation, mediation advocacy, commercial arbitration, employment ADR, and an ADR survey course. Ms. Bedikian also is a national mediation and arbitration trainer, having trained hundreds of neutrals and attorneys for the American Arbitration Association and the National Center for Dispute Settlement. In addition to her lecture and training activities, Ms. Bedikian has written extensively in the field of ADR, having published over 20 articles, five book chapters, and two ADR practice books, including Michigan Pleading and Practice, Vol. 8A (Thompson West, 2nd ed. 1994), with Thomas L. Gravelle, Esq. Ms. Bedikian's mediation and arbitration experience spans all types of business and employment disputes, and post-verdict mediations conducted under the auspices of a special Michigan court rule. Her memberships include the State Bar of Michigan, the American Bar Association, and the Oakland County Bar Association. She is the former Chair (1995/96) of the State Bar Section on Alternative Methods of Dispute Resolution, from which she received the *Distinguished Service Award for Contributions to the Field of ADR*.

Thomas W. Brookover

Thomas W. Brookover currently serves as a mediator/facilitator/arbitrator and visiting Judge in several counties throughout the State. He has worked as a full-time facilitator and arbitrator since 1997, shortly

after he concluded his 7 year-tenure as a Judge on the 48th District Court. He currently serves as an Act 312 Arbitrator and Fact Finder for the Michigan Employment Relations Commission. Tom has conducted hundreds of facilitations and mediated two-party and multi-party disputes. He currently is on Mediation panels in 6 counties. Tom's judicial and legal experience spans nearly 4 decades, and he has conducted hundreds of jury and bench trials in various areas of law. Tom is a graduate of the University of Michigan Law School and completed his undergraduate studies at Yale University. His varied background includes service as a Peace Corps volunteer in Nepal.

Malcolm Brown

Malcolm Brown has practiced labor and employment law representing management only for over 25 years. He has substantial experience in all areas of private and public sector labor and employment law including collective bargaining, Act 312 arbitrations, private sector interest arbitration, unfair labor practice cases, union organizing, labor contract arbitration, statutory and constitutional issues involving public employees, civil rights, employee discharge and discipline, and other complex matters. Mr. Brown lectures frequently on labor law topics and has presented in-house training seminars on a variety of subjects including union organizing, interest arbitration, disability discrimination, discharge and discipline, drug testing, civil rights and wrongful discharge. He has published articles for several industry trade groups and professional associations including the American Society of Employers, Michigan Chamber of Commerce and the Construction Association of Michigan. Malcolm Brown is a graduate of the University of Minnesota Law School and Michigan State University. He is also a member of the State Bar of Michigan and the Labor Law Section of the American Bar Association.

Mark H. Cousens

Mark H. Cousens is a labor attorney and arbitrator. Admitted to practice in Michigan and Ohio in 1970, Mr. Cousens has spent his career representing labor organizations and their members. He is general counsel to AFT/Michigan, the Michigan affiliate of the American Federation of Teachers, the Organization of School Administrators and Supervisors, AFSA, AFL-CIO, affiliates of the Amalgamated Transit Union, AFL-CIO, including affiliates in Detroit, Grand Rapids, Battle Creek, Kalamazoo and Jackson and a number of independent labor organizations. Mr. Cousens has been an invited speaker at all of Michigan's major universities, at the Industrial Relations Research Association and the American Arbitration Association. He has been lead counsel on a number of major matters in the Michigan Court

of Appeals and the Supreme Court including the case deciding that teacher unions which strike are not liable for money damages and the case deciding that the Teacher Tenure Commission may reduce or modify penalties imposed by a local school board. Mr. Cousens also serves as an ad hoc labor arbitrator. He is on the labor panels administered by the American Arbitration Association and the Michigan Employment Relations Commission.

Micki Czerniak

Since February, 1998, Ms. Czerniak has been a Labor Mediator with the Michigan Employment Relations Commission, Department of Labor and Economic Growth. Ms. Czerniak has been with state government since 1988, at which time she was recruited by the Employment Relations Board, Michigan Department of Civil Service, to serve as the state's Compensation Specialist. In that capacity, she managed the Board's Impasse Resolution and Coordinated Compensation Proceedings. Prior to her tenure with 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 interest arbitration proceedings involving public sector employee unions. Ms. Czerniak has a B.A. from M.S.U. and an M.A. in Industrial Relations from Wayne State University.

Jeffrey S. Donahue

Jeffrey S. Donahue is a shareholder with the White, Schneider, Young & Chiodini, P.C. law firm in Okemos. His practice is concentrated in the areas of labor, employment, and education law, negotiating collective bargaining agreements, and grievance arbitration. Mr. Donahue earned his bachelor's degree and his master's degree in Labor and Industrial Relations from Michigan State University. He obtained his juris doctor degree from the Thomas M. Cooley Law School. Mr. Donahue is a member of the Ingham County Bar Association, the Labor and Employment Section of the Michigan State Bar and the American Bar Association.

Dennis B. DuBay

Dennis B. DuBay is a principal in the law firm of Keller Thoma. Mr. DuBay is a graduate of Aquinas College and received his Juris Doctorate from the University of Michigan Law School in 1971. Mr. DuBay has concentrated his practice as a management representative in the field of labor relations law and employment-related litigation for public employers across the State of Michigan. He has authored

publications on grievance procedures and arbitration, public employee disciplinary matters and Act 312 and has lectured on, and conducted programs in, labor and employment law matters for the Institute of Continuing Legal Education, universities and many State and national agencies and employer associations.

Mark Glazer

Mark Glazer has heard numerous Act 312 cases and fact findings over the past 30 years. He is a member of the National Academy of Arbitrators and is a graduate of the University of Michigan Law School. Mark works full time as a labor arbitrator.

Maria Greenough

Maria Greenough has been a staff court reporter for the Michigan Employment Relations Commission since 1982. Prior to MERC, 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 and certifications include Registered Professional Reporter and Certified Stenograph Reporter, as well as a notary public in the State of Michigan.

Frank A. Guido

Frank A. Guido has served as General Counsel to the Police Officers Association of Michigan and its affiliate organizations since 1985. From 1980-1982, Mr. Guido served as a Dearborn Assistant City Attorney. He joined the Law Office of Howard and Guido in 1982 where he began representation of POAM. Mr. Guido received his Bachelor of Arts degree, with High Distinction, from the University of Michigan-Dearborn in 1977 and Juris Doctor degree from Wayne State University Law School in 1980. Mr. Guido has appeared before the National Labor Relations Board, Michigan Employment Relations Commission as well as State and Federal courts in labor arbitration and criminal/civil trials in Michigan, Ohio, Missouri, Washington, D.C. and Florida. Mr. Guido has authored numerous labor and criminal law articles which have appeared in the Law Enforcement Journal and Police Commander Publications. He has been a visiting lecturer at the University of Michigan-Dearborn, Eastern Michigan University and Wayne State University regarding labor law topics. He has also lectured on behalf of the National Association of Police Organizations, POAM, the Michigan Employment Relations Commission and the

Michigan Municipal Risk Management Authority concerning labor and criminal law matters, including Garrity rights.

David Helisek, CPA

David is a Partner in Plante & Moran's Ann Arbor Office. He holds a bachelor's degree in accounting from Michigan State University and has been with Plante & Moran for 22 years. His professional focus is in the municipal area where he oversees audits of over 20 cities, townships and counties in the State of Michigan. He has testified on a number of occasions in ACT 312 Arbitration hearings as a fact witness and is also a member of Plante & Moran's Professional Standards Team.

Steven H. Hilfinger

Governor Rick Snyder appointed Steven H. Hilfinger as director of the newly-created Michigan Department of Licensing and Regulatory Affairs (LARA) and Chief Regulatory Officer to serve in a leadership role in reinventing the State's regulatory and licensing environment. Prior to his appointment to state government by Gov. Snyder in February, 2011, Hilfinger was the managing partner of the Detroit office of Foley & Lardner LLP, a national law firm with more than 900 attorneys in the U.S. and internationally. Hilfinger co-founded the office in 2000 and served as its managing partner from September 2002 to June 2006 and from June 2009 until his appointment. Hilfinger earned a B.B.A. degree, concentrating in accounting, with high distinction from the University of Michigan in 1984 and graduated magna cum laude with a J.D. degree from Northwestern University in 1987.

Thomas E Kreis

Tom served in the United States Army as a Military Police Investigator with primary responsibilities as an undercover narcotics operative and investigator in Germany from 1972 to 1975. In 1975 he was appointed as a patrol officer for the Alpena Police Department. He was elected as the State President Fraternal Order of Police in 1988 and became a Staff Representative for the Police Officers Labor Council in 1989. In 2004 Tom was appointed as a State Labor Mediator with the Michigan Employment Relations Commission, Bureau of Employment Relations.

Mark Manquen

The founder and president of Cornerstone Municipal Advisory Group & RDS Services, LLC, Mark Manquen manages the development of innovative and strategic solutions relating to retiree post-employment health care plan benefits for public sector groups. Mark is an expert in current legislation and accounting standards impacting the public sector and specializes in GASB 45 consulting, Subsidy Recovery services (RDS and ERRP), retiree health-care plans and trust services. Mark's group also provides financial analytics, collective bargaining support and account administration for its clients. Previously, Mark was a tax CPA for UHY Advisors (formerly Follmer, Rudzewicz & Co., CPAs) and later was financial controller for various local companies. Mark has earned a master's degree in tax from Walsh College and a bachelor of business administration from the University of Michigan. He is a resident of Shelby Township.

Sidney McBride

Sidney McBride joined the MERC staff in 2009 in the dual role of handling both MERC docket cases and as election's officer. Prior to this, he worked for over 20 years at the Wayne County Circuit court in positions that included both management (Associate Court Administrator) and labor (AFSCME Council 25 Local president) functions. He is an active member of the State Bar of Michigan, member of the Labor and Employment Law Section and graduated from Wayne State Law School in the top third of his class. Sidney also has private practice experience in the areas of Contract Law, Probate and Real Estate transactions.

James M. Moore

James M. Moore is a graduate of the University of Michigan and its Law School (B.A., 1969; J.D. 1972). After serving as a law clerk to U.S. District Judge John Feikens in Detroit, he joined the firm that is now known as Gregory, Moore, Jeakle & Brooks, P.C. in downtown Detroit. The firm represents public and private sector Unions and workers in Michigan and throughout the country. Jim is a member of the Labor and Employment Law Section of the Michigan State Bar and served as the section chair in 2004-2005.

Sherry Murphy

Sherry Murphy joined MERC in Jan 2003. Since that time, Sherry has become the "Administrative Guru" of Fact Finding and Act 312 case Coordination. With over 30 years of experience in a variety of special

assignments and responsibilities in the administrative realm, she passionately administers the Fact Finding/Act 312 procedures. She is responsible for processing and maintaining the Fact Finding and Act 312 tasks from petition filing to case closure and most everything else in between. Currently, in the processes of moving Fact Finding/Act 312 to the 21st century, she is developing processes that will automate and hopefully, expedite the Fact Finding/Act 312 process for all involved.

Ruthanne Okun

Ms. Okun has been employed in the field of labor and employment relations for the past 27 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, Ms. Okun served as the Personnel & Employee Relations Director of Larden Company, with facilities in Davisburg, Michigan and Plymouth, Indiana. Ms. Okun was employed for nearly 5 years with the law firm of Miller, Canfield, Paddock and Stone in their labor and employment relations department and was a partner at the Riverview law firm of Logan, Wycoff and Okun, PC. For the past 13 years, she has served as the Director of the Bureau of Employment Relations/Michigan Employment Relations Commission for the State of Michigan, where she supervises the Detroit, Lansing and outstate area staff of the bureau, and is legal advisor to the Commission. Ms. Okun is a member of the State Bars of Michigan and Illinois.

Charles T. Oxender

Charles T. Oxender's specialty area is traditional labor law, collective bargaining, grievance and arbitration processing. With his extensive background in these areas, he can assist clients with negotiating and bargaining collective bargaining agreements and represent clients at arbitration hearings. He also participates in employment litigation matters. Professional activities include: American Bar Association, 2000-present, Student Member Since 1997; Labor and Employment Law Section State Bar of Michigan, 2000, Student Member Since 1997, Labor and Employment Law Section Oakland County Bar Association. Honors and awards include: Wayne State University, Wayne Law Review Note and Comment Editor, 1999-00; Assistant Editor, 1998-99; Member, Student Leader Fellowship Program, 1993-95; Co-chair, Platform Personalities, 1994-95.

Lynda Pittman

an adjunct professor at the Thomas M. Cooley Law School. She is also a member of the National Panel of Labor Arbitrators of the American Arbitration Association and the panel of arbitrators of the Michigan Employment Relations Commission. She serves on a number of permanent arbitration panels for employer and labor organizations.

Howard Shifman

Over the last 34 years, Mr. Shifman's practice has been dedicated to the practice of Labor Employment Law in the Public Sector. Twenty-four (24) years ago, he gave up his Union practice and became a management attorney solely and formed his own firm over 15 years ago. At the present time, his firm represents a diverse group of governmental clients, including communities such as Lapeer County, City of Warren, City of Royal Oak, City of Ferndale, City of Berkley, West Bloomfield Township, White Lake Township, City of Lincoln Park, City of Southgate and numerous other cities, townships and counties. He has extensive experience negotiating contracts, grievance arbitrations, and is presently handling numerous interest arbitrations under Act 312. Mr. Shifman also had the opportunity to testify in 2010 and 2011 before the Michigan State Senate Committee on Structural Reform and the Michigan House of Representatives, along with various Michigan Municipal League representatives.

Ann L. VanderLaan

Ann VanderLaan is an attorney with Clark Hill PLC in its Education Law Practice Group. Ann concentrates her legal practice, representing Michigan school districts, principally in the areas of labor and employment law. She has extensive experience in collective bargaining, arbitrations, administrative hearings before MERC, and employment litigation in state and federal courts. Ann regularly advises school districts on current legal trends and laws affecting public schools, which this year has been unprecedented.

Lynda Pittman serves as the Retirement Outreach Director at MERS. Areas of specialty are: public pension funding and actuarial methodologies; current trends in retirement plans; plan administration and the workings of benefit features. Lynda has 15 years of retirement experience with MERS. Prior to MERS, Lynda worked in the Insurance industry, earning her Insurance Institute of America (IIA) designation during her 7-year tenure. Lynda obtained her Bachelor of Business Administration in Marketing and Management, graduating Magna Cum Laude from Northwood University. Lynda is a Certified Administrator of Public Pension Plans (CAPPP); has recently completed certification in Mediation at Lakewood College; has achieved Leadership Development Certificate along with Management Development Certificate from the University of Michigan; and is working to achieve Certified Employee Benefits Specialist (CEBS) designation from the International Foundation of Employee Benefit Programs (IFEBC). Lynda sits as a Board member of the Michigan Labor/Management Association.

Arthur R. Przybylowicz

Arthur R. Przybylowicz is the Associate Executive Director for Legal Services and General Counsel for the Michigan Education Association. He has worked as an attorney representing the Michigan Education Association, both as a member of outside law firms and in-house, for a total of 34 years. Mr. Przybylowicz was with the Lansing law firm of Foster, Swift, Collins & Coey, P.C., for 12 years. He then spent 12 years with the Okemos law firm of White, Beekman, Przybylowicz, Schneider & Baird, P.C. For the last ten years, he has served as MEA General Counsel. Mr. Przybylowicz is a graduate of Michigan State University and the University of Michigan Law School. He served as the Chair of the Labor and Employment Law Section of the State Bar of Michigan in 2000. Mr. Przybylowicz was a co-editor of Employment Litigation in Michigan and the first edition of Michigan Wrongful Discharge and Employment Discrimination Law, served as a co-author of Wrongful Discharge Cases in Michigan, and as the author of the *Employment Law* chapter of the Michigan Basic Practice Handbook published by the Institute of Continuing Legal Education. He is a frequent lecturer on labor law and school law issues.

Karen Bush Schneider

Karen Bush Schneider is a shareholder with the firm. She has experience in all areas of employment law, collective bargaining, and statutory retirement disputes. Ms. Schneider holds both her bachelor's and juris doctor degrees from the University of Notre Dame. In addition to practicing law, Ms. Schneider is