

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
EMPLOYMENT RELATIONS COMMISSION

APPROVED MINUTES
REGULAR MEETING OF OCTOBER 22, 2020
VIA ZOOM CONFERENCING

The meeting of the Michigan Employment Relations Commission was called to order at 10:05 a.m. by the Commission Chair, Samuel R. Bagenstos.

Those in attendance via remote conferencing: Samuel R. Bagenstos, Commission Chair; Robert S. LaBrant, Commissioner; Tinamarie Pappas, Commissioner; Sidney McBride, Interim Bureau Director; Micki Czerniak, Labor Mediator; Carl Wexel, Administrative Law Specialist; Ashley Rahrig, Departmental Analyst; Deborah Stewart, Executive Secretary; Tracy Marr, Mediation Secretary and Sharon Peper, Legal Secretary.

Public by remote attendance: None.

It was moved by Commissioner Robert S. LaBrant and seconded by Commissioner Tinamarie Pappas to adopt the proposed agenda, as presented. A vote was called--Bagenstos, Aye; LaBrant, Aye; Pappas, Aye. The motion passed.

MINUTES

It was moved by Commissioner Pappas and seconded by Commissioner LaBrant to adopt the proposed minutes of the regular MERC meeting of September 8, 2020. A vote was called--Bagenstos, Aye; LaBrant, Aye; Pappas, Aye. The motion passed.

DIRECTOR'S REPORT

The Act 312 Report and Fact Finding Reports were reviewed and discussed.

The MOAHR ALJ Reports were reviewed and discussed. Director McBride stated that the MOAHR ALJs are continuing to conduct virtual hearings and the agency has obtained approval of rule change to allow this process.

The MERC Cases in Commission Review Report was reviewed and discussed.

The MERC Appellate Report was reviewed.

The Election Certification and Elections Trends Reports were reviewed. Director McBride noted that during September 2020 there were seven R petitions filed, four elections held with four exclusive bargaining representatives being certified.

The Mediation Activity Trends Report was reviewed. Director McBride noted there were 104 new contract bargaining cases filed during September 2020.

The New Case Initiations Monthly Report was reviewed and discussed.

ADMINISTRATIVE AGENDA

1. Bureau Director's Updates:

Commission Chair Bagenstos expressed appreciation on behalf of the Commission to Director McBride and to the MERC mediation staff for all of the work done to quickly resolve those disputes in the 19 SEIU nursing home matters. "This was of great significance to our State and notes that the staff worked very hard to get to a resolution that was satisfactory to everyone." Director McBride specifically thanked Labor Mediators Richard Ziegler and Micki Czerniak as well as the assigned FMCS mediators.

Director McBride noted the following:

a. COVID-19 Impact and 2021 Budget:

- The 2021 budget has been approved with funding similar to that with the reduced 2020 budget. The hiring freeze and other restrictions continue considering the uncertainty with COVID-19.
- On October 2, 2020, the Michigan Supreme Court rescinded several executive orders previously issued by the Governor. Since then, Michigan Department of Health and Human Services issued new regulations that mirrored many of the prior COVID-19 safeguards. With those safeguards, MERC offices will continue to be closed to in-person visits from the public and remote work processes will continue through the end of the year. Limited MERC staff continues to rotate into the office to handle onsite work. Director McBride thanked Deborah Stewart, Tracy Marr, Barbara Norris, Sharon Peper and Denise Hinneburg for their ongoing assistance so that the in-office needs are met so all areas can operate smoothly.
- On October 16, 2020, PA 228 of 2020 was issued which amended the Open Meetings Act to allow virtual meetings of Boards and Commissions etc. Director McBride thanked the Commission for supporting the efforts to adjourn the meeting until October 22, 2020 and noted the remaining monthly Commission meetings through the end of this year will be virtual. Starting January 2021, the determination will be made on how to proceed.

b. Hot Issues:

Director McBride briefly noted the status of the following:

- Summarized several recent cases involving labor organizations work stoppage threats in the private and public sectors. Noted the involvement of MERC Labor Mediators to seek resolution in cases involving workers at these locations--19 Nursing homes in SE

Michigan, Detroit Public Schools, the University of Michigan, and the Detroit Department of Transportation. Each of these disputes contained issues, in part, related to concerns about COVID-19.

c. Miscellaneous:

- 2020 Annual Report. Ashley Rahrig has been working on compiling a draft that should be available by the November meeting.
 - 25th Service Acknowledgement. Congratulations extended to MERC Labor Mediator Robert Strassberg on 25 years of State employment—all with MERC. He initially served as an Elections Officer and over the past 11 years as Labor Mediator.
 - Rules Revision. Staff will resume work on the rule changes related to Act 312 and General Rules involving areas such as mandatory e-filing, remote processes, and others. Special review is being given to aspects learned from the agency's operations due to COVID-19.
2. The next regular meeting of the Commission was confirmed for **Thursday**, November 12, 2020 at 10:00 a.m. using Zoom videoconferencing. It was moved by Commissioner LaBrant and seconded by Commissioner Pappas to approve the meeting date and time. A vote was called--Bagenstos, Aye; LaBrant, Aye; Pappas, Aye. The motion passed.

DECISIONAL AGENDA

The Commission decided the following matters:

- * ***City of Detroit Fire Department -and- Detroit Fire Fighters Association, Local 344***, Case No. 19-C-0479-CE

Commissioner Pappas stated that the charge was filed by union. The issue is whether the employer violated PERA by failing to bargain with the union before analyzing data from its new heart monitoring equipment to investigate employee conduct for disciplinary purposes. The ALJ found that the employer violated PERA by failing to bargain over the issue because it involved a mandatory subject of bargaining concerning the potential discipline of employees. It was moved by Commissioner Pappas and seconded by Commission Chair Bagenstos to affirm the ALJ's finding of a violation against the employer. A vote was called by Director McBride—Pappas, Aye; LaBrant, Nay; Bagenstos, Aye. The motion passed by majority vote with LaBrant to issue a dissent opinion.

- * ***Garden City Education Association, MEA/NEA -and- Garden City Public Schools***, Case No. CU18 F-020

Commissioner Pappas noted the charge was filed by the Employer involving the Union seeking to arbitrate the employer's refusal to award the position of varsity soccer coach to a certified teacher in the bargaining unit. The issue is whether the Employer's decision is considered "teacher placement" and if so, did the Union violate PERA by arbitrating it. The ALJ recommended dismissal finding that the employer's decision was not a teacher placement decision because it involved a non-teaching position not contemplated by the phrase "teacher placement" as that appears in 15.3(j) of PERA. In so finding, the ALJ recommended the charge be dismissed. It was moved by Commissioner Pappas to affirm the ALJ's decision and dismiss the charge. A vote was called by Director McBride—Pappas, Aye; LaBrant, Nay; Bagenstos, Aye. The motion passed by majority vote with LaBrant to issue a dissent opinion.

TENTATIVE DECISIONAL AGENDA FOR NEXT MEETING

St. Clair Community College -and- St. Clair Community College ESPA, MEA/NEA, Case No. 19-J-1987-UC

Grand Rapids Employees Independent Union -and- Tatyana Ford, Case No. CU18 F-009

NEW BUSINESS

Commissioner LaBrant asked if Director McBride had received any feedback on the issue of Commission conflicts in the event one Commissioner is recused and the two remaining Commissioners are split on the decision. Director McBride stated that he has received some preliminary information but is researching additional information. Commission Chair Bagenstos suggested seeking input from the Attorney General's office to help clarify the issue.

OLD BUSINESS

None.

PUBLIC COMMENT

None.

ADJOURNMENT

There being no further business before the Commission at this time, Commissioner Pappas moved to adjourn the meeting and seconded by Commissioner LaBrant that the meeting be adjourned at 10:37 a.m. A vote was called. Bagenstos, Aye; LaBrant, Aye; Pappas, Aye. The motion passed.