

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

APPROVED MINUTES
REGULAR MEETING OF JULY 16, 2020
VIA ZOOM CONFERENCING

The meeting of the Michigan Employment Relations Commission was called to order at 10:00 a.m. by the Commission Chair, Samuel R. Bagenstos.

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

Public by remote attendance: None.

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

MINUTES

It was moved by Commissioner Callaghan and seconded by Commissioner LaBrant to adopt the proposed minutes of the regular MERC meeting held remotely on June 18, 2020. A vote was called. Bagenstos, Aye; Callaghan, Aye; LaBrant, 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 recapped an earlier communication sent to the Commission to affirm that the ALJs are utilizing remote hearing processes where possible.

The MERC Cases in Commission Review Report was reviewed.

The MERC Appellate Report was reviewed.

The Election Certification and Elections Trends Reports were reviewed. Director McBride noted that 6 new bargaining units were certified in the month of June 2020 which reflects a usual activity during the summer months.

The Mediation Activity Trends Report was discussed. Director McBride noted that the trends report shows some increase in mediation activity numbers since the March/April

COVID-19 low. Commissioner Callaghan asked if mediators are successful in scheduling remote meetings. Director McBride noted his regular communication to mediators to encourage and reassure party representatives to utilize remote meetings. If an in-person meeting is necessary, MERC staff must remind parties in advance of the need to comply with the requirements under the MIOSHA and CDC guidelines as well as the applicable executive orders such as the 10 person limit for inside assemblies, social distancing, and use of facial masks. Mediators should not put themselves at unreasonable risk by remaining in meeting setting where the state requirements are not being maintained. During June 2020, the majority of the 28 mediation conferences were held by Zoom video conferencing.

The New Case Initiations Monthly Report was reviewed.

Department of Treasury report was reviewed.

ADMINISTRATIVE AGENDA

1. Bureau Director's Updates

Director McBride noted the following:

- a. COVID-19 Impact: Several key updates to a few reissued executive orders and the necessary protocols to minimize transmission of COVID-19. In light of these requirements and the difficulty to enforce those conditions at the respective suites in Cadillac Place and the Mason Building, both MERC offices will remain closed for public access through August 31, 2020. This also precludes the use of the agency's conference rooms or conducting any onsite meetings involving outside persons or groups.
- b. Office Access: Remote processes continue to be used for processing MERC cases and other routine activity. Hearings and mediation conferences are also being conducted by remote means where feasible. Limited MERC staff reports to a MERC office to address those matters which cannot be handled remotely.
- c. Staff Layoffs: Continue on a rotating basis through July 25, 2020.

2. The next regular meeting of the Commission was confirmed for **Tuesday**, August 11, 2020 at 10:00 a.m. using Zoom videoconferencing means. It was moved by Commissioner LaBrant and seconded by Commissioner Callaghan to approve the meeting date and time. A vote was called. Bagenstos, Aye; Callaghan, Aye; LaBrant, Aye. The motion passed.

DECISIONAL AGENDA

The Commission decided the following matters:

- * ***City of Detroit (Department of Transportation) -and- Michigan AFSCME Council 25, Local 312 -and- Jermaine Smith II***, Case Nos. 19-E-0968-CE & 19-E-0969-CU. It was moved by Commissioner LaBrant and seconded by Commissioner Callaghan to dismiss the unfair labor practice in its entirety based on expiration of the statute of limitations. A vote was called. Callaghan, Aye; LaBrant, Aye; Bagenstos, Aye. The motion passed.

Commission Chair Bagenstos noted that the opinion makes clear that case dismissal is based on being time barred by the 6-month limitations period notwithstanding the added review included by the ALJ. The Commission consensus was reached that going forward when there is a clear violation of the statute of limitations, case examination should end on that issue notwithstanding any other claim being asserted by the Charging Party. Director McBride will follow up the ALJs to discuss the Commission's position where a charge is clearly barred by the statute of limitations.

TENTATIVE DECISIONAL AGENDA FOR NEXT MEETING

City of Grayling -and- Police Officers Association of Michigan -and- Todd E. Hatfield, Case Nos. C18 C-022 & CU18 C-005.

NEW BUSINESS

Electronic Signature on Show of Interest Cards—Pilot Project. The Commission reviewed a staff memo and recommendation to establish a pilot policy outlining the requisite criteria for electronic signatures on show of interest cards obtained during an organizing effort. The recommended criteria mirrors much of that currently used by the federal agency--- NLRB for this same purpose. After discussion, the Commission requested further review of any potential conflicts with the rules or other regulations related to the use of substitute signature forms.

OLD BUSINESS

None.

PUBLIC COMMENT

None.

ADJOURNMENT

There being no further business before the Commission at this time, Commissioner LaBrant moved to adjourn the meeting and seconded by Commissioner Callaghan that the meeting be adjourned at 10:40 a.m. A vote was called. Bagenstos, Aye; Callaghan, Aye; LaBrant, Aye. The motion passed.