

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

APPROVED MINUTES  
REGULAR MEETING OF SEPTEMBER 8, 2020  
VIA ZOOM CONFERENCING

The meeting of the Michigan Employment Relations Commission was called to order at 10:01 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; 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.

Commission Chair Bagenstos reflected on the meeting as the first in nearly 10 years without the participation of former Commissioner Edward Callaghan. Commission Chair Bagenstos then welcomed the newest MERC Commissioner-- Tinamarie Pappas of Ann Arbor, Michigan. He noted Pappas' vast legal experience since graduating law school that included 8 years at the NLRB and the last 25 years in private practice mostly focusing on labor law issues. She will be an asset to the Commission. Commission Chair Bagenstos stated how much he has appreciated working with Edward Callaghan.

It was moved by Commissioner Robert S. LaBrant and seconded by Commissioner Tinamarie Pappas to adopt the proposed agenda, as amended. 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 August 11, 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. Commissioner LaBrant requested clarification on the definition of an interim decision as noted in the ALJ report. Director McBride noted a clarification will be obtained from the ALJ.

The MERC Cases in Commission Review Report was reviewed and discussed. Commission Chair Bagenstos noted his recusal on any listed cases involving the University of Michigan. Commissioner Pappas inquired on the protocol for handling a

decision where one Commissioner is recused and a there is no consensus from the remaining Commissioners on the outcome. Director McBride noted the issue will be researched and follow-up provided to the Commission. Commission Chair Bagenstos requested that the agency's legal staff complete an analysis and consult with the Attorney General's office as to consistency among other state commissions on the same underlying concern.

The MERC Appellate Report was reviewed.

The Election Certification and Elections Trends Reports were reviewed. Director McBride noted that during the month of August, 12 representation petitions were filed and two elections held resulting in the certification of an exclusive bargaining representative.

The Mediation Activity Trends Report was reviewed. Director McBride noted the filing of 187 bargaining notices with a large number submitted regarding private sector nursing homes. He also noted that September report will close out the FY 2020 period.

The New Case Initiations Monthly Report was reviewed and discussed.

## **ADMINISTRATIVE AGENDA**

### 1. Bureau Director's Updates

Director McBride noted the following:

#### a. COVID-19 Impact:

The COVID-19 State of Emergency has been extended and several state offices, like MERC, remain closed to in-person visits from the public while remote processes will continue. MERC staff, as well as ALJs, Fact Finders and Act 312 Arbitrators continued to use virtual processes to ensure the case activity remains current with minimum delay.

#### b. Hot Issues:

Director McBride briefly noted the status on four noteworthy cases:

- A work stoppage was avoided at Detroit Children's Hospital involving workers represented by Teamsters 283. MERC Labor Mediator Wanda Mayes assisted the parties to reach a tentative agreement and prevent an employee strike.
- In August, work stoppage notices were filed against 19 cases nursing homes in the Southeastern Michigan area on behalf of workers represented by the union-- SEIU Healthcare Michigan. Director McBride noted that MERC Mediators Micki Czerniak and Richard Ziegler have been in ongoing sessions (including late evenings and weekends) to resolve the contract disputes and averting the work stoppages.
- Detroit Federation of Teachers' members in the Detroit Public Schools Community District announced their authorization of a

work stoppage in response to COVID-19 safety concerns related to in-person classes scheduled for the upcoming semester. MERC Mediator Wanda Mayes assisted the parties to a resolution that included satisfactory safety options.

- Similarly, the Graduate Employees Organization at University of Michigan began a work stoppage on September 8<sup>th</sup> in response to various issues including COVID 19 concerns with in-person classes. MERC Mediator Robert Strassberg is actively working to help the parties reach resolution.

c. Miscellaneous: The 2020 Annual Report is being streamlined with a goal of having the first draft in October.

2. The next regular meeting of the Commission was confirmed for **Tuesday**, October 13, 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**

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

Decision deferred to allow review by the new Commissioner-- Tinamarie Pappas.

## **TENTATIVE DECISIONAL AGENDA FOR NEXT MEETING**

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

## **NEW BUSINESS**

1. Commission Chair Bagenstos stated that the sister agency, MOAHR is seeking Commission support in a change to the current MAHS rules so as to allow ALJs to conduct remote hearings on MERC cases. In sum, it appears that MOAHR is using its emergency rule authority under the Administrative Procedures Act to expand the use of electronic hearings, including video hearings in MERC cases (as permitted with most agencies except MERC and the Public Service Commission). Director McBride referenced the two rules involved—MAHS Rule 101 and Rule 121. Rule 121 allows the ALJs to conduct remote hearings on referred cases. Rule 101 excludes MERC and the Public Service Commission cases from the use of remote hearings under Rule 121.

It was moved by Commissioner Tinamarie Pappas and supported by Commissioner LaBrant to support MOAHR's request for a change via the

emergency rule process to allow ALJs to conduct electronic and video hearings on MERC cases. A vote was called. Bagenstos, Aye; LaBrant, Aye; Pappas, Aye. The motion passed.

2. A resolution honoring Former Commission Chair Edward D. Callaghan was presented and a portion was read into the record by Commission Chair Bagenstos. It was moved by Commissioner LaBrant and supported by Commissioner Pappas to adopt the Resolution as presented. A vote was called. Bagenstos, Aye; LaBrant, Aye; Pappas, Aye. The motion passed.

Commissioner Pappas expressed-- "it is a great honor to join the Commission and I am honored that the Governor thought me worthy of this appointment. [Former Commissioner Callaghan] is a legend and there are big shoes to fill and that I will do my best to live up to the example that he set". Commissioner LaBrant stated that he served with Ed for almost 8-1/2 years and found him to be a thorough professional and a thorough gentlemen and called him "Mr. Collegiality".

## **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 10:46 a.m. A vote was called. Bagenstos, Aye; LaBrant, Aye; Pappas, Aye. The motion passed.