Bureau of Employment Relations
Michigan Employment Relations Commission

MERC Basics on Labor Relations under Michigan Law (PERA, LMA & Act 312)

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MICHIGAN DEPARTMENT OF
LABOR AND ECONOMIC OPPORTUNITY

MI Law re: Union & Management Relations

MI has a vested interest to:

- Promote and Maintain Respectful, Collaborative and Productive Relationships between Union and Management Representatives;
- Uphold Established Worker Protections for Public and Private Sector Employees including Supervisory and Non- Supervisory Workers;
- Minimize Workplace Conflicts and Disruptions;
- 4 statutes support and facilitate the above: LMA, PERA & Act 312, NLRA (Federal).

Bureau of Employment Relations (BER)

- **Contains 2 agencies**
- **MERC and Wage Hour Division (WHD since 2016)**
- **MERC and WHD operate separately w/ different staff and offices**
- **MERC enforces 3 labor statutes– LMA, PERA & Act 312**

- **MERC: Michigan Employment Relations Commission**
  - **3 Commissioners appointed by Governor**
  - **2 max from same political party**
  - **Commissioners: Pappas (chair), Young and Chiaravalli**
  - **BER Director oversees all agency functions & operations**

MERC SERVICES in 2 DIVISIONS

Labor Relations Division

- ULPs
  - Employers
  - Unions
  - Individuals
- Elections
  - Representation petitions
  - Unit Clarification petitions
  - Union audit filings
- Work Stoppages
  - Public Schools (PA 194)

Mediation Division

- Labor Mediation
  - Contract Negotiations
  - Contract Grievances
  - Work Stoppages
  - Collaborative Bargaining (IBB)
  - Training Outreach Modules
  - Public & Private Sectors
- Fact Finding
- Act 312 Arbitration
- Grievance Arb Appts
- Outreach & Training

Dispute Resolution Areas (LR)

- **ELECTIONS**
- ***Determine Bargaining Units and Exclusive Union Representative***
- Vote by Unit Members (R petition)
- MERC Decision (UC Petition)

- **UNFAIR LABOR PRACTICES**
- ***Alleged Violations of PERA or LMA***
- Bargaining Duty Violations
- Discriminatory Conduct or Anti Union Animus
- Duty of Fair Representation

Dispute Resolution Areas (MED)

- **COLLECTIVE BARGAINING**

Process to reach a Collective Bargaining Agreement (CBA)

- Negotiations and Mediation
- Factfinding and Act 312 Arbitration
- Work Stoppage Mediation (Private Sector Only)
- **CBA GRIEVANCES**

Alleged violation of CBA provision

- MERC Labor Mediator Assistance
- Grievance Arbitrator Appointments

ELECTIONS PROCESSES IN A NUTSHELL

Filings: R and UC Petitions

- Election petition filed in MERC e-File.
- MERC Agent conducts conference to obtain mutual consent to hold an R election or settle UC dispute.
- If no consent or agreement reached, case goes to ALJ for hearing.
- ALJ conducts hearing on matter.
- MERC issues an order that dismisses the petition, directs an election, or determines the placement of a disputed position.
- MERC order subject to Reconsideration and appeal to Appellate Court

- v If election ordered or consented to, MERC agent facilitates a mail ballot or ”on site” election.
- v Returned ballots counted– majority wins
- v If no Objections, MERC issues an Election Certification.
- v No other MERC election for 1 year.
- v Unlike NLRB, with MERC can’t use RM petition to challenge majority status of an existing Union.

ULP PROCESSES IN A NUTSHELL

Filings: ULP Charge Form

- Party initiates CE or CU case in MERC e-File within SOL period
- MERC reviews, initiates, offers *Voluntary Mediation* option
- If VM rejected/ unsuccessful– Refer to MOAHR ALJ for hearing.
- ALJ conducts prehearing/ hearing, or issues show cause order.
- ALJ issues Decision and Recommended order (DRO).
- Case returned to MERC.
- Within 20 days of DRO, any party can file objections (exceptions) so Commission can review.
- If no exceptions, MERC adopts DRO as Final Order.
- If exceptions filed, MERC performs reviews then issues Final Decision and Order (MERC D&O).
- MERC D&O is subject to Reconsideration by MERC
- MERC D&O subject to MI Appellate Court Review

MEDIATION SERVICES IN A NUTSHELL

Contract Bargaining

- § Either party initiates CB case in MERC e-File before bargaining starts
- § Teams meet and negotiate CBA terms
- § If needed, any party requests Mediator (Agency may initiate mediation if threat of workplace interruption).
- § Mediator assists with resolution of open provisions or issues
- § Mediator can also assist with last offer elections or bargaining team discussions or ratification meetings
- § If no complete agreement, party can file FF or 312 petition (public sector only)

Grievances

- v Grievance processed per CBA Grievance Procedure BUT before grievance arbitration.
- v Parties agree to try GM before next step.
- v Party files GM case in MERC e-File
- v Mediator meets and discusses pros and cons with each party.
- v Parties (not Mediator) agree on resolution including if grievance withdrawal is best.
- v If unresolved, parties may go to next option.
- v GM saves time and arbitration expense
- v If arbitration is necessary, file GA case in MERC e-File to get qualified arbitrator appointed with no filing fee.
- v Parties must pay arbitrator's fees

Training

- Ø MERC Basics
- Ø MERC Beyond the Basics.
- Ø Collaborative Bargaining (IBB)
- Ø Interest Based Problem Solving (non- CBA)
- Ø Labor Management Committees
- Ø Collective Bargaining for Novices
- Ø Grievance Processing & Contract Administration for Novices
- Ø Effective Use of Virtual Tools in Bargaining

Election Concept: Bargaining Unit vs Union

- § BARGAIN UNIT (BU) not same as UNION
- § Bargaining Unit: group of workplace positions/ classifications that share a community of interest.
- § Union: Bargaining Agent or Representative selected for collective bargaining and contract administration on behalf of a BU.
- § BU members vote in MERC Elections (RC, RD, SD).
- § Union Members vote to ratify CBAs & Union postions

Election Concept: Community of Interest

- Attributes shared among positions in Bargaining Unit
- Again: Bargaining Unit (UNIT) NOT the same as UNION
- No "bright line test"– various factors such as: Bargaining history, reporting hierarchy, similar duties, etc.
- Employer's placement given deference if Community of Interest exists.
- Placement not necessarily in BU with best "community of interest"
- MERC prefers inclusion (if members want) over being unrepresented.
- Election Quirks re: certain mixed units (supervisors; 312)
- Once in, severance very difficult if community of interest exists.

Elections Concept: Accretion, Decert & Severance

Accrete or Sever to/from Existing BU

- Requires RC petition
- Incoming or outgoing BU positions vote only
- Sever positions is very difficult
- "Extreme divergence of interest likely required" to sever (RC or UC)
- UC used for new or substantially modified positions.

Decert– Cease Union Representation

- RD petition filed by BU member w/ supporting signatures.
- BU votes to discontinue Rep.
- Employer c/n file RD petitions.
- 1 yr bar on new MERC election.
- If switching Unions, Use RC petition not RD petition.

Elections Severance - Cases

- ***U of M & Teamsters 214*** ***(R18 G-051 on 4-2-19)***

Unit fragmentation not allowed to separate Guest Services positions from Patient Services positions in the same BU. GS position shares a community of interest with existing BU positions. Difficult to pull them out (sever).

Note Difference if Mixed Avt 312 Unit after 2006 MERC Case:

- ***Berrien Cnty*** **(R 18 H-055 on 4-2-19)**

MERC orders an election to separate the Jail deputies (non-312) from an existing mixed unit of Sheriff's deputies. MERC applied 2- part test: subject to police hazards & principal function to promote public safety that any work stoppage threatens community safety. [Follows lead MERC case– Oakland Cnty Sheriffs and OC Dep Sheriff Assoc (2006)]

[NOTE: Changed again with 2023 Legislative changes expanding 312 eligibility]

Bargaining Concept: Duty To Bargain Mandatory Subjects

- Duty exists on Mandatory Subjects of Bargaining, not Non-MSOB *like permissive or prohibited.*
- Must Demand or Request to Bargain
- Demand/Request must be Clear & Unambiguous

Bargaining Concept: No Duty To Bargain NMSOB

- May bargain NMSOB-- Not required
- ULP to insist on bargaining NMSOB
- “Duty” may exist on the “impact” of NMSOB
- Most PSOB re: public schools repealed in 2023

DUTY TO BARGAIN: Cases

- Information Requests: Must provide if needed to reasonably to carry out statutory obligation *(e.g., collective bargaining & contract administration)*

  Lapeer Sch & SEIU L517M C18 H-078 on 5-22-19

  - "Covered By Doctrine": Does an exising provision exist that negates bargaining obligation on that issue?

Bargaining Concept: Impasse vs Imposition

- Point when further bargaining would be “futile”
- No “Bright line rule”
- MERC Mediators CANNOT declare “Impasse”
- Based on “totality of circumstances”
- “Mediation” often used in consideration
- Imposition may occur after bonefide impasse
- *Private sector may exercise Strike or Lockout*
- *WORKSTOPPAGE PROHIBITED IN PUBLIC SECTOR*

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Impasse vs Imposition– Case

- *Hurley Medical Center & RNPA (C17 G-066 on 1-2-19)*
  - *Impasse claim broken where Employer's final offer contained new term never discussed during bargaining.*
  - *Refusal to bargain 'new term' violated bargaining duty*

ULP Concept: Statute of Limitations (SOL)

- 6m from knowledge of violation (actual or reasonable).
- Strictly applied; Can't waive; Difficult to toll
- Best to file-- then suspend (if possible)
- Generally, starts with first violation
  - *Detroit Trans Corp* (C18C-014 and CU18 C-004 on 11-26-18)

    "*Montcalm Cnty & AFSCME 3067.03* (C18 C-020 on 2-28-19)

ULP Concept: Anti-Union Animus

- Alleges mistreatment, retaliation, bias connected to Claimant's exercise of protected activity under PERA, LMA (or NLRA).
- Must be both Concerted and Protected– not about ONLY YOU.
- Mostly filed against Employers, sometimes Unions
- Independent rationale can be a defense.

ULP Concept: Duty of Fair Representation

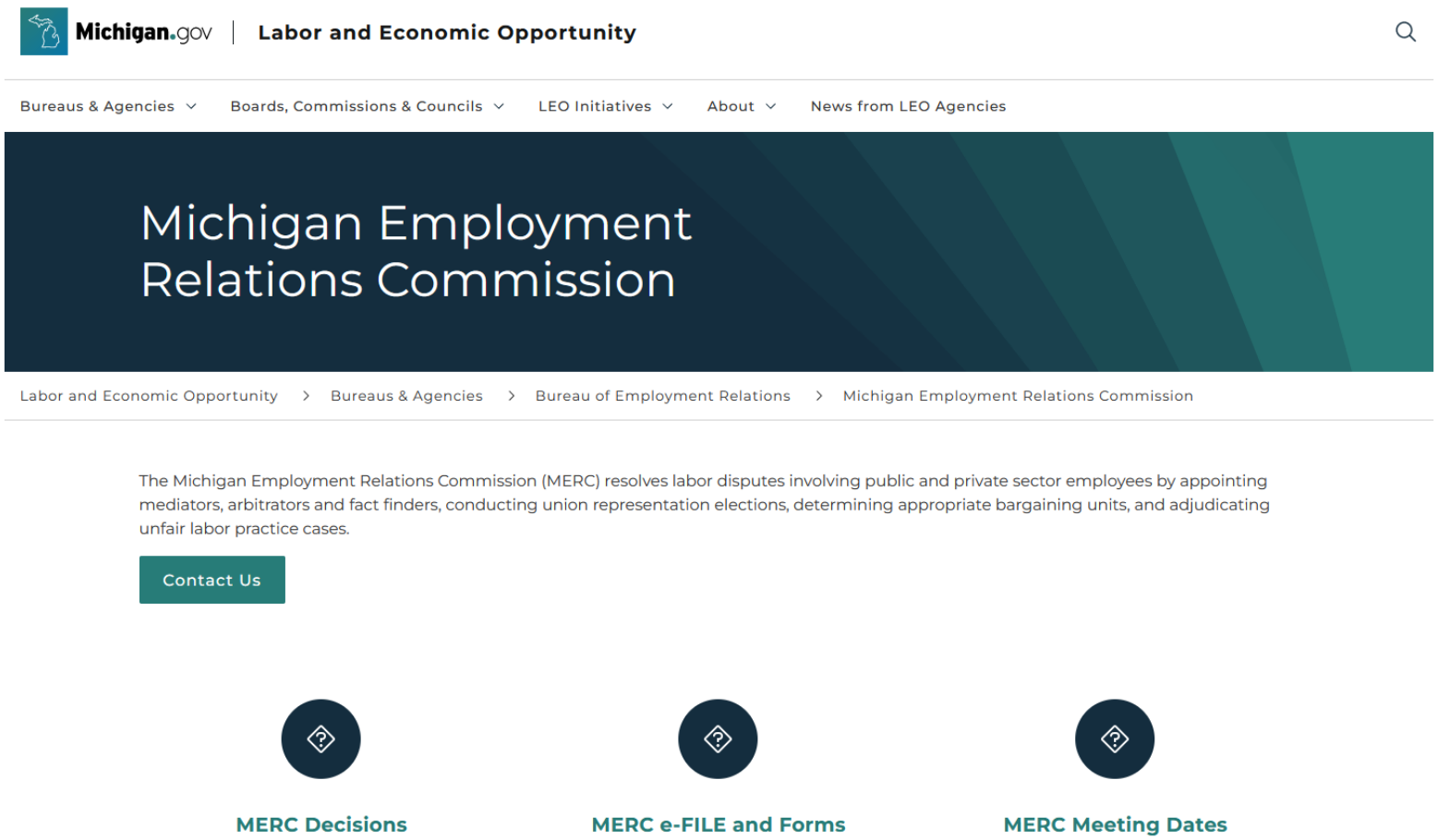
- Member claims Union d/n represent them well
- Union's duty to overall BU
- Not same as an "Attorney – Client Relationship"
- Duty extends to entire Bargaining Unit…not just Dues Payers
- Need not file/ arbitrate all grievances; Must reasonably respond.
- Union decisions cannot be **arbitrary, bad faith or capricious**.
- MERC Grievance Mediation good defense against DFR claims.

2021 MERC case – Union response went too far…Union commented case was meritless but added person was not a Union dues payer.

Bargaining & Grievance Tips

- Know your CBA– especially key provisions like Grievance Procedure, Disciplinary Procedure, Leave Time….
- Utilize “Persuasion” rather than “Aggression”
- Build Relationships based on “Integrity” and “Trust”
- Management & Employer Reps not ‘per se’ bad people
- Avoid winning the “battle” and losing the "war”
- Focus Most on Strategy and Less on Emotion
- Remain Objective, Optimistic, Realistic & Focused

MERC Website



MERC Website

- www.michigan.gov/merc
- Publications, Forms, MERC Decisions, etc
- Help tools like--

  " Guide to Public Sector Labor Law in MI"
- MERC e-File system launched 12/18/2018
- Public can file and view MERC cases **online**

MERC e-Advancements

- Designated filing email addresses (6)
- Designed Webforms for case initiations
- Mandatory e-Filing & e-Service on Contract and Grievance cases (CB, GM, GA, 312, FF).
- E-Balloting on R Petitions & CBA Ratifications.
- Majority Status Verifications

Other MERC e-Advancements

- Virtual Mediation & Other Processes
- Live Stream Monthly Commission Meetings
- E-Signatures on Show of Interest Cards
- *YouTube viewing of Fact-Finding/312 Hearings.*

THANK YOU

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