

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FISCAL YEAR 2017 ANNUAL REPORT
(October 1, 2016 thru September 30, 2017)



Prepared by Bureau of Employment Relations Staff
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INTRODUCTION

MESSAGE FROM THE COMMISSION CHAIR

On behalf of the Michigan Employment Relations Commission (MERC), I am pleased to present our 2016-2017 Annual Report. This report is published to assist constituents responsible for harmonious labor-management relations and to promote the interrelated interest of the public, the employee and the employer.

For a more than a half-century, the Public Employment Relations Act (PERA), administered by the Bureau of Employment Relations (the Bureau or BER), has guided labor and management representatives as they seek to resolve labor relations disputes and negotiate collective bargaining contracts in Michigan. The provisions of PERA, coupled with high caliber labor relations professionals, have provided stability for employers and labor organizations, alike.

Consistent with the Bureau's mission, the following priorities were successfully implemented: 1) rules to administer Public Act 194 regarding public school employee strikes and employer lockouts and 2) a Succession Plan to address projected staff retirements. Further, more than 10 training presentations and outreach programs were conducted during this fiscal year. This included Basics training programs for labor and management representatives throughout the State of Michigan. In addition, Interest Based Bargaining training was made available upon request. These successful trainings were due in large part to the leadership and hard work of our Mediation Division and the partnerships they have established with both management and labor organizations.

Mediation services offered by this agency were pivotal in maintaining employment stability and assisting the parties to reach voluntary resolution in both collective bargaining and grievance disputes. Our Mediation staff continues to be instrumental in assisting parties to reach resolution in public safety disputes, resulting in fewer petitions for Fact finding and Act 312 Arbitration. Our mediators have worked collaboratively with school districts and municipalities that have faced a financial emergency consistent with the requirements of Michigan's public school deficit elimination plan legislation. Moreover, management and labor organizations have taken advantage of Grievance Mediation services provided by the Bureau, thereby eliminating the need for continuous costly and time consuming grievance arbitration.

Also noteworthy is that our Employee Engagements Survey results are commendable again this year demonstrating a strong and positive connection between a person and his or her job.

Under the capable leadership of our long tenured Bureau Director Ruthanne Okun, Bureau staff have developed a number of inter-agency partnerships that have included the National Labor Relations Board, the Federal Mediation and Conciliation Service, and the State of Michigan Library. Dashboard metrics that measure the time in which orders are issued and representation elections are conducted clearly indicate successful accomplishment of key objectives. These activities serve as a catalyst for positive change in fostering cooperative labor-management relations.

As FY 2018 commences, MERC/BER will continue to approach existing and new challenges with a continued zeal to foster productive labor-management relations in workplaces throughout the State. Visit the MERC website at www.michigan.gov/merc for updated information, and please share any feedback on how we may better serve the labor-management community.

Respectfully submitted,
Edward D. Callaghan, MERC Chair

MESSAGE FROM THE BUREAU DIRECTOR

As I enter my 20th year as Director of the Bureau of Employment Relations, I would be remiss if I didn't recognize staff members of our agency, who amaze me daily by their dedication to the Bureau's processes, mission and goals. At BER (labor), we work in tandem with the Michigan Employment Relations Commission (MERC) to fulfill our mission of fostering peaceful and cooperative employer-employee relations. The Bureau assists MERC and acts as an independent agency charged with administering various laws governing labor-management relations in the State of Michigan. Bureau staff does its job in a productive work environment in which employee engagement is fostered and encouraged. During the past year, BER staff has implemented court and agency rulings regarding controversial legislative changes, including: right to work; prohibited subjects of bargaining; and cost limitations on employer-paid health insurance. The Bureau continues to provide able and timely support to the Commission, allowing MERC to perform its work of deciding cases without fanfare. Legislation has been enacted providing the Commission with a limited exemption from the Open Meetings Act when deliberating on the merits of a case, allowing MERC to decide its cases more expediently and to better fulfill its responsibilities as a quasi-judicial agency. In addition, our Bureau has worked diligently to ensure that funds are available to support our efforts, including implementation of a case tracking modernization project that will be completed in the coming year by a competent vendor. Last (but certainly not least), Bureau staff has welcomed the Wage & Hour division into our abode, and both areas have worked together – each with a different but equally important statutory mandate - to serve the citizens of the State of Michigan without compromising the mission and goals of either area.

In short, I join with my fellow staffers at the Bureau of Employment Relations as we share this Annual Report with you. We are proud of its contents and of the fact that it reflects our accomplishments and all the good that we do to ensure that the agency's processes work well for Michigan's labor relations community and the entities that we serve.

Ruthanne Okun
Director, Bureau of Employment Relations

COMMISSION MEMBERS

MERC CHAIR EDWARD D. CALLAGHAN

Edward D. Callaghan was appointed as Chair of the Michigan Employment Relations Commission on June 20, 2011 and was re-appointed on June 6, 2014, and, again, on October 3, 2017. Dr. Callaghan served as a full-time faculty member at Oakland Community College (OCC) from 2005 to 2015 and is currently an Adjunct Professor at OCC. He previously served as President of OCC's Orchard Ridge campus and as Vice Chancellor for Human Resources and College Communications. Chair Callaghan has negotiated labor contracts in the public sector for more than 30 years representing public employers, including: the Dearborn Public Schools, Wayne County Community College, Henry Ford Community College and Oakland Community College.

Dr. Callaghan's extensive collective bargaining experience includes: handling MERC elections, unfair labor practice claims, and mediation cases. He has also served as an Act 312 arbitrator for police and fire municipal disputes and as a fact finder for governmental units in Michigan – both on behalf of the Michigan Employment Relations Commission.

Chair Callaghan earned a Ph.D from the University of Michigan, an MBA from Wayne State University, and a B.S. from the University of Detroit.

MERC Chair Callaghan's appointment is for a 3 year term that expires June 30, 2020.

MERC COMMISSIONER ROBERT S. LABRANT

Robert S. LaBrant was appointed a member of the Michigan Employment Relations Commission on July 1, 2012 and was re-appointed on May 27, 2015. Commissioner LaBrant previously served as Senior Vice President and General Counsel at the Michigan Chamber of Commerce where he retired from after nearly 35 years. Commissioner LaBrant came to the Michigan Chamber from the Business-Industry Political Action Committee in Washington, D.C.

Commissioner LaBrant also worked for the Appleton, WI Area Chamber of Commerce and the Metropolitan Milwaukee Association of Commerce. He served on the staff of Congressman Harold V. Froehlich of Wisconsin. He was a Captain in the U.S. Army with service in Viet Nam.

Commissioner LaBrant holds a juris doctorate, *cum laude*, from the Thomas M. Cooley Law School in Lansing, Michigan. He has served as an adjunct faculty member at Lansing Community College and the Thomas M. Cooley Law School.

Commissioner LaBrant's appointment is for a 3 year term, expiring on June 30, 2018.

MERC COMMISSIONER NATALIE P. YAW

Natalie P. Yaw was appointed a member of the Michigan Employment Relations Commission on June 25, 2013 and was re-appointed on June 9, 2016. Commissioner Yaw has several years' experience in business law, both from a litigation and regulatory perspective. Currently, she is a

partner at Erskine Law, PC, in Rochester, where she focuses her practice on commercial litigation for corporate clients.

Commissioner Yaw previously served as Vice President and Senior Counsel at Citizens Financial Group, Inc., and as an attorney at Dickinson Wright, PLLC, where she specialized in commercial and consumer lender liability litigation. She is a member of the State Bar of Michigan and serves as Vice Chancellor for the Episcopal Diocese of Michigan. She has a bachelor's degree from Rice University and a juris doctorate, *summa cum laude*, from Michigan State University College of Law.

Commissioner Yaw's appointment is for a 3 year term, expiring on June 30, 2019.

MERC HISTORY

The Michigan Employment Relations Commission (MERC or the Commission) is an independent agency charged with administering various laws governing labor-management relations throughout the State of Michigan. The Commission is comprised of three members, one of whom is the designated chairperson, appointed for staggered 3-year terms by the Governor with the advice and consent of the Senate. No more than two members may be of one political party. MERC, formerly known as the Michigan Labor Mediation Board, was established in 1939 pursuant to the Labor Relations and Mediation Act (LMA).

MERC administers two principal statutes: the Public Employment Relations Act, Act 336 of 1947 (PERA) and the Labor Mediation Act, Act 179 of 1939 (LMA). These statutes grant collective bargaining rights to public (PERA) and private (LMA) sector employees within the State of Michigan, except for employees in state classified civil service, the federal government, and those within the exclusive jurisdiction of the National Labor Relations Board (NLRB). MERC also administers the compulsory arbitration process available to municipal police and fire department employees (Act 312 of 1969) as well as to state police troopers and sergeants (Act 17 of 1980).

Chairs of the Michigan Employment Relations Commission, from 1960-2017 are as follows:

- Allen D. Chisholm 1960-1962
- Malcolm R. Lovell, Jr. 1963-1964
- Robert Howlett 1965-1975
- Charles Rehmus 1976-1980
- Morris Milmet 1980-1983
- William M. Ellmann 1983-1986
- David S. Tanzman 1986-1991
- Joseph B. Bixler 1991-1993
- Maris Stella Swift 1994-2003
- Honora J. Lynch 2003-2006
- Christine A. Derdarian 2006-2011
- Edward D. Callaghan 2011-present

BUREAU OF EMPLOYMENT RELATIONS

The Bureau of Employment Relations (the Bureau or BER) is housed within the Michigan Department of Licensing and Regulatory Affairs (LARA). BER is the administrative arm of the Commission. MERC/BER activities are conducted through two separate divisions -- the Labor Relations Division and the Mediation Division. The Labor Relations Division assists in resolving unfair labor practice charges (ULPs) and union representation matters (e.g., bargaining unit determinations). The Mediation Division assists with settling disputes involving contract negotiations and grievances in the public and private sectors. Other services provided by BER include: fact finding; compulsory arbitration; grievance arbitrator selection; last offer elections; establishing Labor-Management committees; and training in collaborative negotiations.

Mission Statement

The mission of the Bureau of Employment Relations is to provide high quality support to the Michigan Employment Relations Commission, and to foster peaceful, cooperative and effective public and private sector employer-employee relationships by neutral, timely and accurate adjudication of labor disputes, application of conflict resolution processes, and education and training.

Bureau Directors from 1971 through 2017:

- Hyman Parker 1971-1975
- Robert Pisarski 1975-1980
- Barry Hawthorne, Acting Director 1980-1983
- Shlomo Sperka 1983-1998
- Ruthanne Okun 1998-present

Supervision of Wage and Hour Division

During FY 2016, the Wage and Hour Division within LARA was transferred from the Michigan Occupational Safety and Health Administration (MIOSHA) to the Bureau of Employment Relations for organizational and operational efficiency. With the transfer, BER Director Ruthanne Okun and BER Mediation Supervisor James Spalding assumed supervisory responsibility over the Wage and Hour Division. During FY 2017, Wage and Hour Division has been fully integrated into the Bureau of Employment Relations, while protecting and retaining the separate missions of both agencies.

Ruthanne Okun, BER Director has been in the field of labor and employment relations for the past 36 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, Director Okun served as the Personnel & Employee Relations Director of Larden Company, with facilities in Davisburg, Michigan and Plymouth, Indiana. Director Okun was employed nearly 5 years with the law firm of Miller, Canfield, Paddock & Stone in its labor and employment relations department, and was a partner at the Riverview law firm of Logan, Wycoff and Okun, PC. Since 1998, she has served as the Bureau

Director and supervises staff located in Detroit, Lansing, and out-state areas, including staff of the Wage and Hour Division. Finally, she also serves as legal advisor to the Commission. Director Okun is a member of the State Bars of Michigan and Illinois.

Miles Cameron has been a Labor Mediator with the Bureau of Employment Relations since July of 2008. Prior to joining the Bureau, he had been an active member of the United Steelworkers since 1978 and held many positions in his local union including; Safety Chair, Steward, Committee Man, Negotiations Chair, Grievance Chair, Educational Coordinator and President. In 1995, he began working as a staff representative for the United Steelworkers with duties that included representing members in arbitrations, settling grievances, negotiating contracts and other responsibilities.

Jim W. Corbin joined the mediation staff in April, 1999. Prior to his BER appointment, Jim held positions in the public and private sectors including: Deputy Director of the Office of Human Resources and Labor Relations for the Michigan Department of Labor, Director of Labor Relations for the Michigan Family Independence Agency and co-founder and owner of CDET, Inc., a Michigan company specializing in customized employment and job training programs. Jim received his Bachelor of Science Degree and Master's Degree in Labor and Industrial Relations from Michigan State University. Jim serves on the Board of Directors of the Michigan Labor-Management Association and served on the Alumni Board of Directors as a past president of the MSU School of Labor and Industrial Relations.

Micki Czerniak has been a Labor Mediator with the Bureau of Employment Relations since 1998, and with state government since 1988. Prior to coming to the bureau, she served as the state's Compensation Specialist with the Department of Civil Service where she managed the Employment Relations Board's Impasse Resolution and Coordinated Compensation Proceedings. Prior to joining 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 Act 312 and other arbitration proceedings. Ms. Czerniak has a B.A. from MSU and an M.A. in Industrial Relations from Wayne State University.

Ed Eppert has been with the Bureau of Employment Relations since 2004 as a labor mediator in the Upper Peninsula, where he lives with his family. His previous work experience has been balanced between management and labor, including retail, education, and other government service. He has held Teamster, RCIA and MEA union cards, serving 17 years in school union leadership roles while a teacher/coach. He then was a school superintendent for 11 years. He later worked several years promoting small business growth at the county level. He obtained a B.A. from MSU majoring in economics, an MBA from Central Michigan University and an Ed. Specialist Degree in School Administration from Northern Michigan University.

Maria Greenough has been a staff court reporter for the Bureau of Employment Relations since 1982. Prior to coming to the bureau, 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; her certifications include Registered Professional Reporter and Certified Stenograph Reporter.

Denise A. Hinneburg has been employed by the State of Michigan, Bureau of Employment Relations, since 1996. She came to the Bureau as a Governor's Management Intern and became

an Elections Officer in 1998. Prior to joining the Bureau, Denise had experience as a Human Resource Generalist, Academic Advisor and Placement Director. Denise received a Bachelor of Arts Degree from Michigan State University and received a Masters of Arts in Industrial Relations from Wayne State University.

Tom Kreis joined the mediation staff of the Bureau of Employment Relations in 2004 and currently works out of Alpena as the mediator assigned to the geographic area of the Northern Lower Peninsula. Prior to becoming a mediator, Tom had been on the Alpena Police Department from 1975 to 1989 when he assumed the position as a full time Staff Representative for the Police Officers Labor Council representing over 45 Police, Sheriff and Public Safety Departments in all matters of labor relations, including: Act 312 hearings, grievance arbitration, negotiations and unfair labor practices. Tom retired in January, 2017 from state service.

Tracy Marr is the Lansing Mediation Secretary for the Lansing BER office and secretarial support to the Elections Officer in Detroit and has been in this position since August, 2015. Tracy returned to State service in 2008 as a legal secretary for the MAHS Administrative Law Judges and in 2013 became a shared service Legal Secretary with BER. Before returning to State service, she worked as a Legal Secretary in private practice and the office manager to a family owned construction business; she still performs the later responsibility.

Wanda Mayes is a Labor Mediator assigned to the Detroit office of the Bureau of Employment Relations since 2000. Her educational background includes a bachelor of science in business administration (1985), a master of arts and industrial relations (1998), and a juris doctor (2016), all from Wayne State University. Her career in Labor Relations began in 1988 with the City of Detroit's labor relations division. There she was responsible for negotiating labor contracts; conducting grievance hearings and preparing written responses; advising department human resources officers concerning grievance and contract administration; preparing and presenting arbitration cases before arbitrators and umpires; and coordinating unfair labor practice and election petitions with the Michigan Employment Relations Commission (MERC).

Sidney McBride joined the Bureau of Employment Relations in 2009 and currently serves as a Labor Mediator. Before becoming a mediator, he worked as an Administrative Law Specialist with responsibilities that included drafting Commission decisions, administering the Act 312 and Fact Finding programs and conducting election matters. Prior to coming to MERC, Sidney worked at the Third Circuit Court in management and labor (AFSCME) roles that included, in part, collective bargaining, grievances, arbitrations and MERC proceedings. He is an active member of the State Bar of Michigan, and a member of the Labor and Employment Law Section. He graduated from Wayne State Law School in the top third of his class.

D. Lynn Morison is the Staff Attorney for the Bureau of Employment Relations, having previously worked for the Bureau as an administrative law judge. Before joining the Bureau in 2001, she was a staff attorney for the Michigan Employment Security Board of Review. Prior to working for the state, she was on the faculty of Michigan State University where she taught business law and published two articles on labor law topics. She is a member of the Labor and Employment Law Section of the American Bar Association and is the Neutral Co-chair of the Section's State and Local Government Bargaining and Employment Law Committee. She previously served as the Neutral Co-chair of that Committee's subcommittee on Practice & Procedure – Unfair Labor Practices. She is also an active member of the Labor and Employment

Law Section of the State Bar of Michigan and the Black Women Lawyers Association of Michigan. Ms. Morison received a B.A. from Michigan State University, a J.D. from the University of Michigan, and an LL.M. in labor law from Wayne State University.

Barbara Norris joined the Bureau in 1981 and currently is the longest serving member of the Bureau of Employment Relation's staff. She functions as mediation division secretary in the Detroit Office. Before coming to MERC, she worked in the Wage and Hour Division of the then Department of Labor. Barbara has a degree from George C. Wallace State Junior College & Technical Institute in Selma, Alabama.

Ashley M. Olszewski joined the Bureau of Employment Relations in 2014 as a Paralegal. Prior to her employment with BER, Ashley worked for five years as the Lead Paralegal in a firm specializing in family law, and as an HR Specialist with Imetris Corporation. In 2009, Ashley earned her B.S. from Eastern Michigan University, majoring in Paralegal Studies, and in 2012, earned her Master's Degree in Public Administration with a concentration in Human Resources from Wayne State University. Ashley is also an active member of the Labor and Employment Law Section of the State Bar of Michigan.

Nancy Pitt performs secretarial and executive support activities for the Director of the Bureau of Employment Relations and members of the Michigan Employment Relations Commission. She began her employment with MERC in 1982 and with the State of Michigan in 1977 as a typist with the Department of Social Services. In 1979 she accepted a position as secretary to the Manager of the Detroit Regional Office of the Department of Civil Service. In 1982, she moved to the Department of Labor, Bureau of Employment Relations to provide administrative support services to the Executive Assistant and the Commission.

James Spalding has been the Mediation Supervisor for the Bureau of Employment Relations since September 2, 2012, and a Labor Mediator since October 9, 1992. Formerly, Assistant Director of Labor Relations for the Michigan Association of School Boards (1986-1992); Business Representative for the International Union of Operating Engineers, Local 547 (AFL-CIO) (1982-1986); Federal Aviation Administration, Air Traffic Controller (1977-1981) and President of the Professional Air Traffic Controllers Organization (PATCO), Local 375 at the time of the 1981 PATCO air traffic controllers' strike. Jim served seven years in the U. S. Air Force (1969-1976) and held the rank of Staff Sergeant. He was elected to the Delhi Township Park Commission in 1984, re-elected in 1988 and 1992 and served as Chairperson of the Park Commission from 1989 to 1996. James Spalding went to Lansing Community College, earning an Associate Degree in Business, Personnel/Labor Relations, *magna cum laude*.

Deborah Stewart joined the Bureau of Employment Relations in 2011 with over 25 years of legal experience that included 16 years with the law firm of Kelley Casey, P.C. (f/k/a Kelly, Casey & Moyer P.C.) where she served as Legal Secretary/Paralegal/Assistant Operations Manager. In this multi-faceted role, she developed and implemented a training program, including a manual for incoming legal secretaries. She also assisted in managing all facets of the office support administration including IT and employee-related matters. At MERC, she provides support to a diverse set of functions in the labor relations division (commission docket) and mediation division (Act 312 and fact finding).

Robert Strassberg has been a Labor Mediator since January of 2009. He previously headed the Bureau's Election Department for 12 years. Prior to joining the Bureau of Employment Relations, Bob has been a Personnel Director, Management Consultant, and a Labor Representative. Bob has a B.A. from Wayne State University and also attended WSU's MAIR Program (Masters Industrial Relations Program).

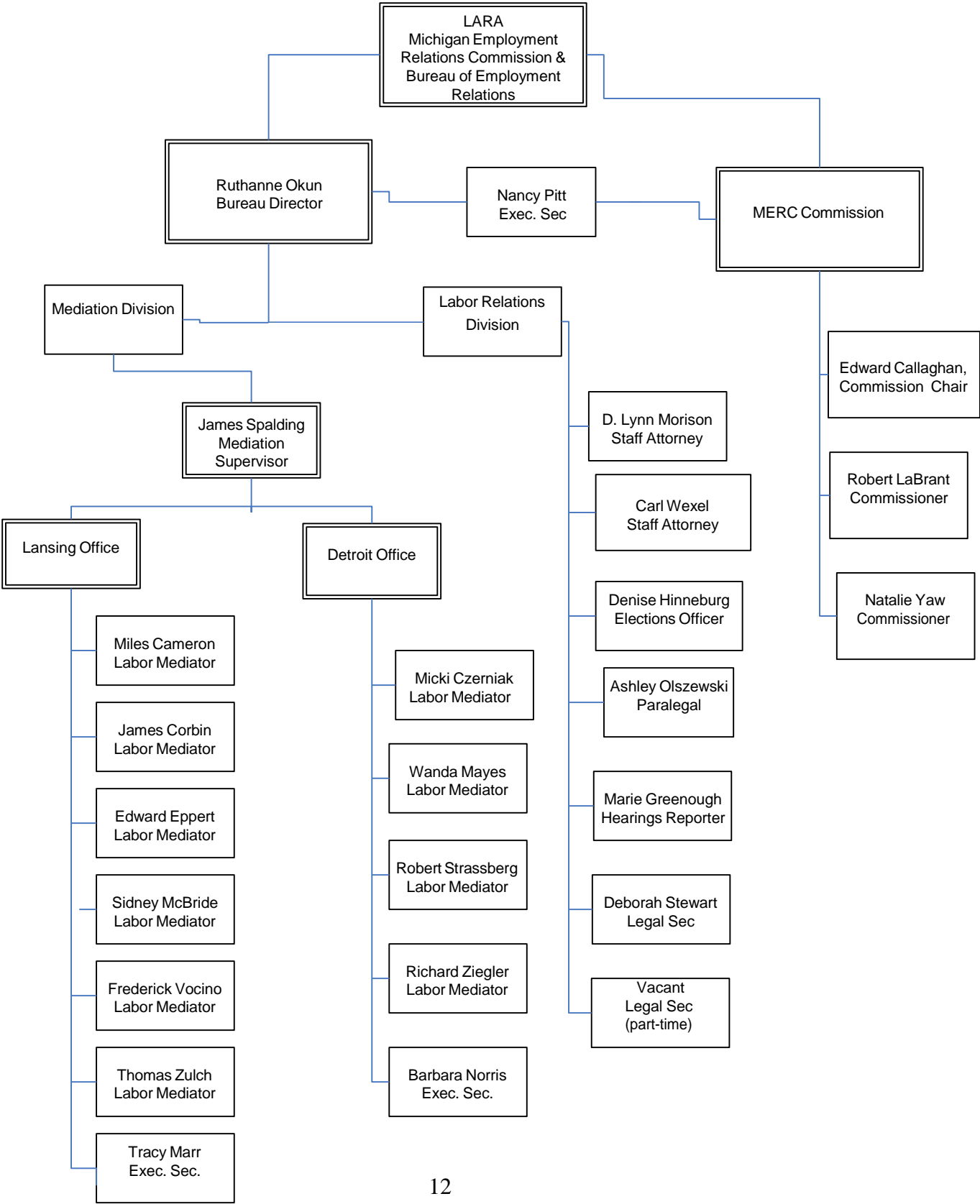
Fred Vocino has been a Labor Mediator with the Bureau of Employment Relations since October 2009. From 1991 to 2009, he held a staff position with the Michigan Nurses Association (MNA). There he conducted contract negotiations/administration and rights arbitration, assisted with policy development and led in mediation and ULP proceedings. Before 1991, he was an elected UAW official at Wayne State University. In his academic studies at Wayne State (B.F.A.), he developed an appreciation for alternative dispute resolution principles, the application of which he regularly practiced while at the MNA. Fred serves in the Grand Rapids area and covers southwest Michigan from Whitehall to Sturgis.

Carl Wexel works as an Administrative Law Specialist for the Bureau of Employment Relations/Michigan Employment Relations Commission and was previously employed by the Bureau as a law clerk. Prior to law school, he was employed as a Director of Labor Relations for CSX Corporation, where he handled contract negotiations and administration, and as a Field Examiner for the National Labor Relations Board. He is a member of the Labor and Employment Law Section of the State Bar of Michigan. Mr. Wexel has a B.A. with High Distinction from the University of Michigan, a Master of Industrial and Labor Relations from Cornell University and a J.D. from Wayne State University.

Richard Ziegler has been a mediator with the Bureau of Employment Relations since 1997. From 1982 to 1997, he worked as a field representative (business agent), for the Fraternal Order of Police, Labor Council/Police Officers Labor Council. From 1968 to 1982, he worked as a police officer in the cities of Detroit and Wixom. While working as a police officer he served in several union positions including executive board member of the Detroit Police Officers Association and Secretary and Vice President of the AFSCME police local in Oakland County. Rich has a B.A. in Law Enforcement and Business Administration from Mercy College of Detroit and an M.A. in Industrial Relations from Wayne State University.

Tom Zulch joined the BER mediation staff in July 2017, taking over the territory previously serviced by Tom Kries in northern Michigan. Prior to joining the Bureau, he was senior staff attorney for the Police Officers Labor Council from 2004 through 2017, handling all legal matters including critical incidents, contract and discipline arbitrations, Act 312 and Fact Finding cases. Tom was appointed to serve as Commissioner on the Michigan Commission on Law Enforcement Standards. In addition, Tom served as an attorney for the Detroit Police Officers Association from 1999 to 2004. He was a Public Safety Officer for the City of Berkley from 1987 to 1998. Tom was in the last graduating class from the Detroit College of Law in 1997 prior to it relocating to Michigan State University.

ORGANIZATIONAL CHART
As of September 30, 2017



MICHIGAN ADMINISTRATIVE HEARING SYSTEM (MAHS)

With the creation of the State Office of Administrative Hearings and Rules (SOAHR) in 2005, Michigan became the State with the largest centralized hearings panel in the nation. Under an Executive Order, SOAHR was renamed as MAHS in early 2011. The mission of MAHS is to serve the citizens of the State of Michigan with fair, efficient, and unbiased decisions. Three Administrative Law Judges from MAHS are exclusively assigned to conduct MERC hearings related to union representation matters and unfair labor practice charges.

MERC Administrative Law Judges (ALJ)

ALJ Julia C. Stern is assigned exclusively to cases arising under the State's collective bargaining statutes, the Public Employment Relations Act (PERA) and the Labor Mediation Act (LMA). She has been involved in the administration of these statutes for more than 31 years. She received her undergraduate and law degrees from the University of Michigan and University of Michigan Law School. She was employed as a field examiner in Region 7 of the National Labor Relation Board from 1973-1976, and in private practice as an attorney representing employers in the private sector before coming to work for MERC in 1981. She served as staff attorney for MERC from 1981 to 1997 and has been an ALJ with the State since 1997.

ALJ David M. Peltz has been hearing cases on behalf of MERC since 2001. Prior to that, he was employed by MERC in the capacity of Legal Specialist to the Commission. Mr. Peltz was previously on the faculty at Michigan State University Law School where he taught Legal Research, Writing, and Advocacy. From 1994 to 1997, ALJ Peltz worked as a Research Attorney with the Michigan Court of Appeals in Detroit. He received a B.A. from the University of Michigan and a J.D. from Wayne State University. Mr. Peltz was a contributor to, and assistant editor of the MERC publication-- *A Guide to Public Sector Labor Relations in Michigan*. He has often been a presenter on matters pertaining to public sector labor law to outside organizations including the State Bar of Michigan's Labor & Employment Law Section.

ALJ Travis Calderwood began hearing cases on behalf of MERC in May of FY 2014. He previously was employed at the Bureau of Employment Relations as an Administrative Law Specialist beginning in 2013, handling matters related to the "Freedom to Work" laws. Prior to joining the Bureau, Travis was employed at the law firm of Collins & Blaha, P.C. in Farmington Hills, where he represented numerous public school districts in all areas of employment and labor law, as well as in state and federal compliance and regulatory issues. Travis attended Hillsdale College where he earned numerous scholarships and awards and graduated with a B.A. in Political Economy. He received his law degree from Ava Maria School of Law in Ann Arbor, where he was awarded a full tuition scholarship. Travis is a member of the State Bar of Michigan.

STATUTORY OVERVIEW

JURISDICTION AND STATUTORY AUTHORITY

MERC administers the following statutes:

- Public Act 176 of 1939, the Labor Relations and Mediation Act (LMA) – regulates collective bargaining relationships between private sector unions and small private sector employers not falling within the jurisdiction of the National Labor Relations Act.
- Public Act 336 of 1947 as amended, the Public Employment Relations Act (PERA) – grants all public employees within the State of Michigan excluding classified civil service employees of the State and employees of the federal government the right to organize and be represented by labor organizations of their choice.
- Public Act 312 of 1969 as amended by PA 116 of 2011, the Compulsory Arbitration Act (Act 312) – provides for compulsory binding arbitration of labor-management disputes involving public police and fire department employees.
- Public Act 17 of 1980 – provides for compulsory binding arbitration of labor-management disputes involving the State of Michigan and the Michigan State Police Troopers and Sergeants.

SIGNIFICANT LEGISLATIVE CHANGES AND ENACTMENTS

Since 2011, collective bargaining in Michigan (primarily public sector) has been greatly impacted by several amendments to PERA, the LMA and Act 312, and by other legislative changes that affect the Commission's administration of these three statutes. The scope of these legislative changes is broad and includes such areas as: expansion of the prohibited subjects of bargaining for employees subject to the Revised School Code and the Teachers' Tenure Act: including discipline, discharge, evaluation, layoff, and recall (2011 PA 100-103); limits on employer contributions to employee health care costs (2011 PA 152); restrictions on giving pay and benefit increases to employees after contract expiration (2011 PA 54); changes in the compulsory arbitration process for Act 312-eligible police and fire department employees (2011 PA 116); the ability of public employers to consolidate or transfer services (2011 PA 258-263); union audit filing requirements (2011 PA 53); enactment of Right-to-Work laws (2012 PA 348 and 349); re-definition of emergency manager laws (2012 PA 436); exclusion of Act 312-eligible employees from the provisions of Act 54 (2014 PA 322); changes to the union audit filing requirement (2014 PA 414); changes to Commission procedures in cases involving allegations of public school strikes and lockouts (2016 PA 194); and the Commission's exemption from the requirements of the Open Meetings Act only when deliberating the merits of a case.

Since FY 2013, the Commission has issued numerous decisions interpreting the effects of the changes resulting from the aforementioned legislative enactments. (See the ULP section beginning on page 21). An updated chart of these legislative changes, annotated with a brief description and

references to the related MERC decisions, appears on the agency's website at www.michigan.gov/merc.

UNITS OF GOVERNMENT IN FINANCIAL DISTRESS

2012 PA 436 (The Local Financial Stability and Choice Act)

The Local Financial Stability and Choice Act (2012 PA 436) became effective on March 28, 2013. Upon the confirmation of a finding of a financial emergency in a local unit of government, as defined by 2012 PA 436, the local government may select from certain options, which include entering into a Consent Agreement negotiated with the State Treasurer or the appointment by the Governor of an Emergency Manager. A material uncured breach of the Consent Agreement may result in the Governor placing the local government in receivership.

A local government operating under the terms of a Consent Agreement is not subject to Section 15(1) of 1947 PA 336 (PERA) and, therefore, has no duty to bargain with the representatives of its employees for the term of the Consent Agreement.

The Governor also may appoint an Emergency Manager to address a financial emergency within a local unit of government. An appointed Emergency Manager has broad powers and acts for and in the place and stead of the governing body and the office of the chief administrative officer of the local government. Among the powers of an Emergency Manager is the power to reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. In addition, a local government placed in receivership is not subject to Section 15(1) of 1947 PA 336 (PERA) and, therefore, has no duty to bargain with the representatives of its employees for a period of five years from the date on which the local government is placed in receivership or until the time that the receivership is terminated, whichever occurs first.

Before removing a local government from receivership, the governor may appoint a receivership transition advisory board to monitor the affairs of the local government until the receivership is terminated.

Emergency Manager Appointments and Consent Agreements¹

At the opening of FY 2017 (10/1/16), three municipalities and five public school districts within MERC's jurisdiction were operating under the control of an Emergency Manager or with a Consent Agreement. In addition, six municipalities were in receivership with a Transition Advisory Board at the helm.

At the close of FY 2017 (9/30/2017), one municipality and three public school districts within MERC's jurisdiction were operating under the control of an Emergency Manager or with a Consent Agreement. In addition, three municipalities and one school district were in receivership with a Transition Advisory Board at the helm. One municipality was operating under a Financial Review Commission. Notably, one county and seven municipalities previously in receivership had exited a financial emergency, and receivership status was terminated by the Department of Treasury.

¹ State of Michigan, Department of Treasury, Emergency Manager Information Report

Deficit School Districts²

The Michigan Department of Education is required to issue quarterly reports to the legislature on school districts with year-end deficits (in deficit at the close of the fiscal year) and the districts' progress in reducing those deficits. The Michigan Department of Education reported 29 school districts and public school academies in deficit at the close of FY 2016, down from the 41 districts in deficit at the close of FY 2015. Michigan public schools operate on a fiscal year of July 1 through June 30 of the following calendar year.

The State Department of Education's final quarterly report covering FY 2017 reflected the status of the 25 districts that ended FY 2016 in a deficit position.

- 8 deficit districts projected elimination of their deficit in FY 2017, subject to final audit.
- 10 districts projected a reduced deficit.
- 4 districts projected an increased deficit.
- 3 districts eliminated their deficits with school operating taxes.

One school district that began FY 2017 with a positive fund balance was projected to end the fiscal year in deficit.

Detroit Public Schools Community District replaced Detroit Public Schools at the beginning of FY 2017. The original Detroit Public Schools exists to pay off its accumulated deficit, while the new Detroit Public Schools Community District provides educational services.

Early Warning Legislation³

On July 7, 2015, Governor Snyder signed into law Public Acts 109-114, providing the Michigan Department of Treasury additional financial authority over public school districts, intermediate school districts and public school academies. The legislation included provisions allowing school districts to obtain assistance from their Intermediate School District and the Department of Treasury prior to facing a financial emergency.

Public Act 109 requires the State Treasurer to determine whether or not potential fiscal stress currently exists or may exist during the current school fiscal year (July 1 – June 30) or the following two fiscal years, and whether the district or academy may be unable to meet its financial obligations and still provide educational services in compliance with state law. If that determination is made, the public school district, intermediate district or academy has 60 days in which to enter into a contract with an intermediate school district or the "authorizer" of a public school academy (as provided for in the statute).

Public Act 110 of 2015 requires the Department of Treasury to conduct a preliminary review for school districts subject to a Deficit Elimination Plan that exceeds five years. Of the 25 districts that were in deficit on June 30, 2016, 14 fall under Treasury's oversight.

² State of Michigan, Department of Education Quarterly Report to the Legislature on Deficit Districts, September 16, 2015 and September 7, 2016.

³ 2015 PA 109; 2015 PA 110; 2015 PA 111

2017 POTENTIAL FISCAL STRESS⁴

In 2017, 8 districts were declared to have the potential for fiscal stress. Seven districts were identified using the financial projection model, and one district was identified through budget reviews. As of September 1, 2017:

- One district improved its financial position and thereby is no longer subject to Department oversight.
- One district incurred a general funds deficit placing the district under MDE oversight.
- One academy was closed by its authorizer Central Michigan University.
- The remaining five districts continue to be subject to Department oversight:

Financial stress in municipalities and public school districts directly impacts the mission of the Michigan Employment Relations Commission and the Bureau of Employment Relations. During FY 2017, as in the last several years, collective bargaining continued to be difficult, especially with some locations facing a new level of enhanced financial reporting requirements due to the early warning legislation referenced above. A mix of minimal wage increases in some locations and some salary schedule step increases appeared in FY 2017, but, again, those modest increases continued to be offset by increased employee cost for health care and retirement benefits. Bureau mediation staff continued to face difficult circumstances while striving to assist the parties in reaching settlements.

An updated Department of Treasury Emergency Manager Information Report and a Department of Education Deficit School District Report are submitted to the Michigan Employment Relations Commission for review and consideration at each of its regular meetings.

Municipal Finance & 2012 PA 436

During FY 2015, two of Michigan's largest municipal employers utilized MERC services as part of an effort to reduce their large deficit budgets. In each situation, the respective parties were faced with adopting new collective bargaining strategies (compared to the traditional style) in light of the application of 2012 PA 436, Michigan's emergency manager law. In December, 2014, the City of Detroit exited from the largest public sector bankruptcy in U.S. history, having relied (in part) on the appointment of an emergency manager (EM). Conversely, the County of Wayne decided not to use an EM and, instead, bargained with its represented employee groups as part of a Consent Agreement approved by the State as explained further below.

Detroit's EM & Bankruptcy

As noted in our previous Annual Reports, during FY 2013, the State appointed an EM in the City of Detroit to address the City's financial emergency. Once the EM was appointed, the City had no duty to bargain with its employees' representatives. The EM suspended all collective bargaining activity impacting all represented employee groups, except for employees in the Detroit Water and Sewerage Department (DWSD) and others subject to the Federal Urban Transit Act. The suspension of collective bargaining for most groups also raised questions regarding those employees eligible for compulsory arbitration under Act 312. While Act 312 had long been viewed

⁴ State of Michigan, Department of Treasury, Quarterly Report to the Legislature on Deficit Districts, September 1, 2017

as an extension of PERA, some representatives asserted that the law operated separately and independently. In FY 2014, MERC decided the question by ruling that Act 312 operates as an extension of the collective bargaining process authorized under PERA. Finding that a public employer that has no duty to bargain cannot be required to participate in Act 312 arbitration, MERC dismissed all Act 312 petitions involving the city based on the EM's choice to suspend collective bargaining due to the financial emergency.

Also during the EM's tenure, the city filed for Chapter 9 protection in federal bankruptcy court. This action stayed all litigation including any labor relations matters pending before MERC that involved the City of Detroit.

At the close of the bankruptcy process in FY 2015, MERC was holding in abeyance sixty-seven (67) cases involving the city, which had been filed prior to and/or during the bankruptcy—mostly unfair labor practice charges. In April 2015, MERC was authorized to resume processing those cases, many of which had been resolved while being held in abeyance. Labor mediators sought out opportunities for voluntary withdrawal or settlement; ALJs re-activated cases that had been suspended mid-way through adjudication; and MERC legal staff initiated action on those cases in which previously filed exceptions had been stayed. By the end of FY 2016, the overall number of pending pre-bankruptcy cases involving the City of Detroit had been reduced from sixty-seven (67) to twenty-three (23). By the end of FY 2017, all pending pre-bankruptcy cases involving the City of Detroit had been resolved.

Wayne County's Consent Agreement

Early in January 2015, the newly-elected County Executive began to address Wayne County's deficit by relying on options under Act 436. Rather than following the EM approach as in Detroit, the County sought to obtain state approval of a comprehensive consent agreement. This process differs from using an EM because it allows the parties to collectively bargain for a limited time in order to obtain ratified collective bargaining agreements (CBAs) that become part of a final consent agreement to be approved by the State Department of Treasury.

In light of the short timeline, management and labor representatives worked tirelessly with MERC labor mediators to avoid application of the more stringent provisions of Act 436. By the beginning of FY 2016, the County had successfully ratified collective bargaining agreements with all but one of its represented employee groups, AFSCME Local 3317, which had filed a petition for Act 312 arbitration. Inasmuch as the County had no duty to bargain after the first 30 days of the Consent Agreement, the Commission granted the County's motion to dismiss the arbitration petition. Subsequently, the County imposed terms and conditions on AFSCME Local 3317. AFSCME Local 3317 filed several unfair labor practice charges against the County over incidents alleged to have occurred before and after the county entered into the Consent Agreement.

On November 7, 2016, asserting that the suspension of the county's duty to bargain had come to an end, the union petitioned for mediation. The County contended that the suspension of its duty to bargain continues until October 1, 2018. The County also requested that the Commission order the dismissal of the pending unfair labor practice charges between the parties. Upon review of the matter, the Commission determined that, by the terms of the Consent Agreement, the suspension of the County's duty to bargain continues until September 30, 2018. However, the Commission denied the County's request for dismissal of the unfair labor practice charges because the

Commission would have no jurisdiction over those matters until the ALJ issued a decision and recommended order and one of the parties filed an appeal. At the time of the preparation of this report, this case is on appeal to the Michigan Court of Appeals. You may find information on the agency's website at www.michigan.gov/merc regarding the current status of the case.

MERC PROCESSES

REPRESENTATION PETITIONS AND ELECTIONS

MERC Representation Proceedings

The Public Employment Relations Act (PERA) provides to all public employees in Michigan with the right to organize and be represented by a labor organization of their choice. Section 15 of PERA provides that a public employer shall bargain collectively with a representative of its employees. The Commission is authorized to conduct representation proceedings to determine an exclusive collective bargaining representative.

Representation Petitions

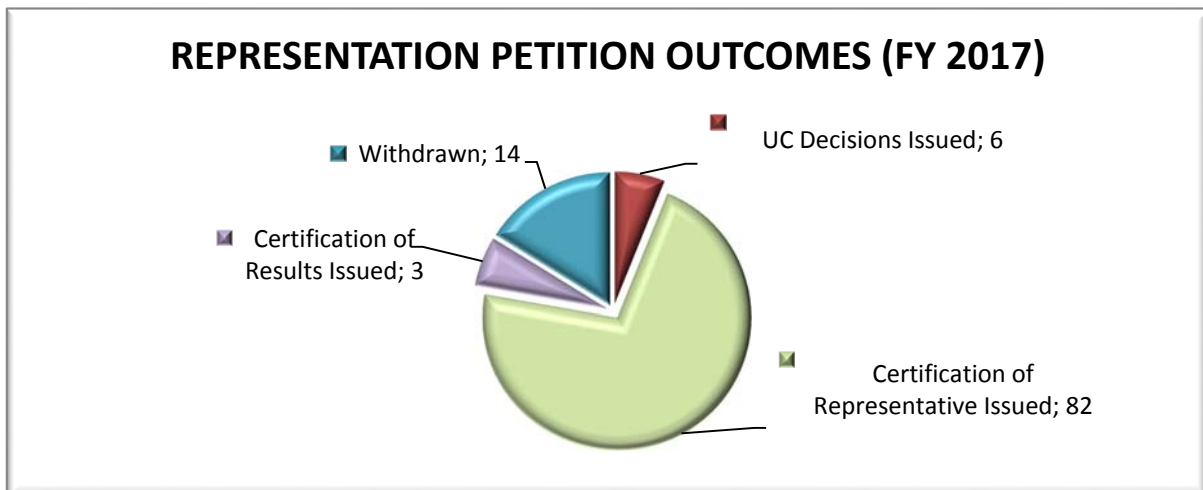
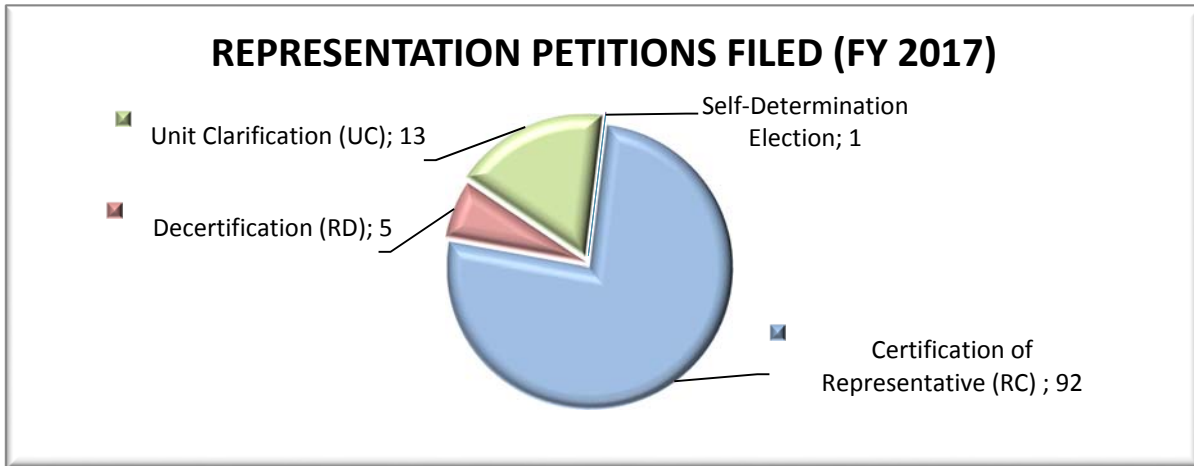
A petition for representation proceedings (R petition) is used to determine a collective bargaining representative, to decertify an existing bargaining representative, or to clarify a position(s) when an employer and labor organization disagree on the placement of a newly-created or substantially changed classification(s). Aside from voluntary recognition by an employer, the determination of a bargaining representative can occur by one of three procedures: Consent Election, Commission Directed Election or Unit Clarification. The R petition has five distinct sub-types to choose from: **Certification of Representative (RC)**, used when a group of employees wish to be represented by a union or association or change to a new representative or to accrete historically excluded position(s) into the bargaining unit; **Decertification (RD)**, used when a group of employees in a bargaining unit assert that their current representative no longer maintains majority support and they no longer want to be represented by it; **Self Determination (SD)**, when a union representing multiple bargaining units under the same employer wants to merge the separate units into a single bargaining unit; **Representation (Employer) (RM)**, filed by an employer when multiple labor organizations claim to be the collective bargaining representative of the same unit of employees; and **Unit Clarification (UC)**, used to determine placement of a new or substantially changed position established after a unit has been certified. With a UC petition, the Commission reviews the record and issues an order resolving the dispute over the placement of the contested position. No balloting or election occurs with a UC petition.

Consent Elections or Commission Directed Elections

There are two different types of elections conducted by MERC. A Consent Election is one where no disputed issues exist and the parties authorize MERC to conduct an election. Conversely, a Commission Directed Election occurs when disputes remain and the parties are unable to agree to a Consent Election. The dispute is referred to an ALJ for a factual and legal determination. Based on the ALJ's findings, the Commission reviews the record and either directs an election or dismisses the petition.

Election Outcomes

When a labor organization receives a majority of the valid ballots cast in a representation election, the Commission issues a **Certification of Representation** declaring that entity as the exclusive representative of the bargaining unit. If no labor organization receives a majority of the valid ballots cast or the election results in a tie, MERC issues a **Certification of Results** indicating that no bargaining representative was certified. During FY 2017, the following representation petition activity occurred:



UNFAIR LABOR PRACTICES – FY 2017

PERA and the LMA establish grounds for a party to file an unfair labor practice charge (ULP or charge) against an employer (C case) and/or labor organization (CU case). After a charge is filed with MERC, if it states a claim under MERC's jurisdiction, it is transferred to an ALJ at the Michigan Administrative Hearing System (MAHS) to make a factual and legal determination on whether the allegations establish a violation of the applicable Act. The ALJ may conduct a formal hearing as part of this process. Based on the evidence and arguments presented in the record, the ALJ issues a written decision and recommended order that contains findings of fact, conclusions of law, reasons for those conclusions, and the ALJ's recommended order for disposition of the case.

If a party files an appeal of the ALJ's decision (referred to as "exceptions"), those exceptions are reviewed by the Commission. The Commission will issue its own decision and order that affirms the ALJ, reverses the ALJ in whole or in part, or remands the matter for further factual findings. If no exceptions are filed, the Commission issues a final order adopting the ALJ's decision as its own.

During FY 2017, case activity routinely involved charges filed by employers, labor organizations, and individuals asserting violations of the duty to bargain, the duty of fair representation, and the right to engage in or refrain from protected concerted activity. As in FY 2016, the Commission received several charges regarding the impact of various legislative amendments enacted since 2011. In FY 2017, the Commission resolved unfair labor practice charges that involved the impact of 2011 PA 152 (which set limits on employer contributions to employee health care costs); 2011 PA 103 (which expanded number of the prohibited subjects of bargaining for public school employers and the labor organizations representing public school employees subject to either the Revised School Code or the Teachers' Tenure Act); 2012 PA 349 ("Freedom to Work" for public sector employees); and 2012 PA 436 (which provides a process to determine whether a local unit of government is under a financial emergency and provides the local government with various remedial measures that may be used to address the financial emergency).

In *Wayne County*, Case No. D16 K-0900, issued May 12, 2017, the Commission held that, the State Treasurer has broad discretion in setting the terms of a consent agreement under Act 436. This includes the authority to provide that the employer's duty to bargain can be suspended beyond the consent agreement release date, which was based on the employer's completion of certain obligations specified under the agreement. Additionally, in a decision issued July 12, 2017, the Commission denied Wayne County's motion for reconsideration of MERC's earlier decision. The Commission rejected the County's contention that the suspension of the County's duty to bargain also relieved the County of responsibility for unfair labor practices allegedly committed before or during the period that the duty to bargain was suspended. At the time of the preparation of this report, this case is on appeal to the Michigan Court of Appeals.

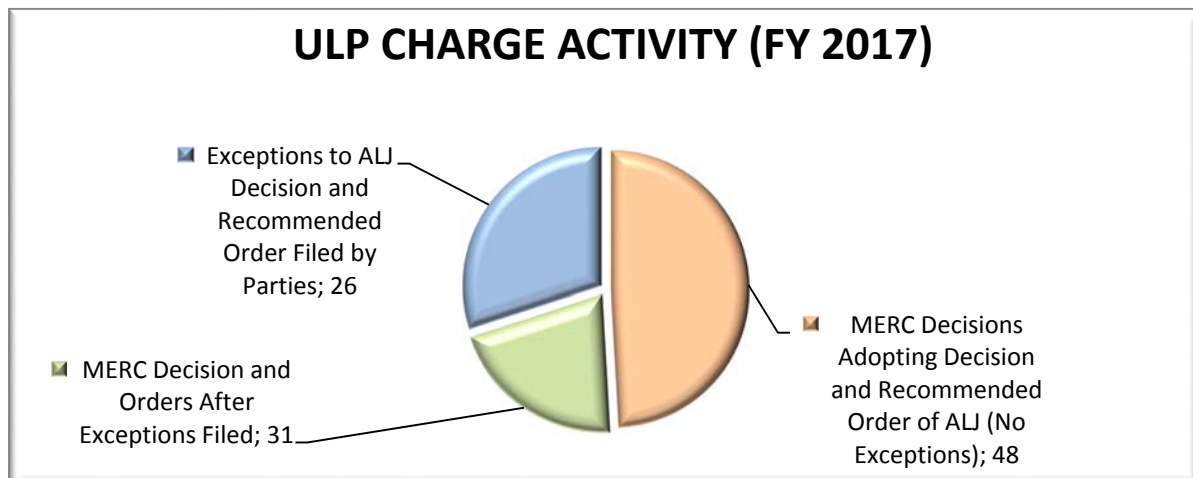
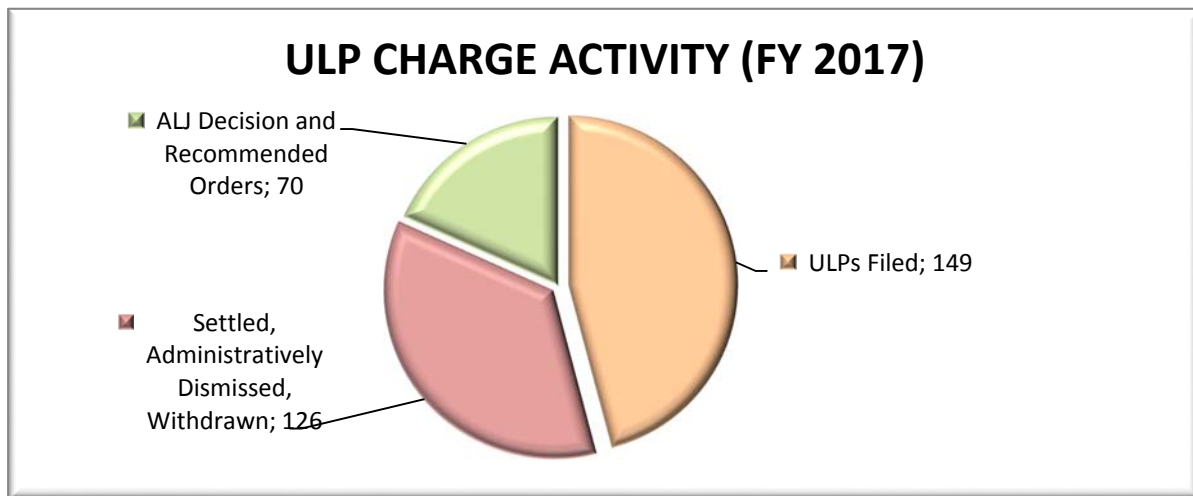
In *Michigan Education Association, MEA/NEA (Vassar Public Sch)*, Case No. CU16 A-002, issued March 24, 2017, the Commission found that the Union violated PERA by demanding that the employer arbitrate a grievance over the recall of a teacher, a prohibited subject of bargaining under Act 103. The Commission explained that due process rights are not enforceable in grievance arbitration when the grievance addresses decisions about a public school employer's procedures regarding personnel decisions involving staffing reductions or recalls from staff reductions. At

the time of the preparation of this report, this case is on appeal to the Michigan Court of Appeals. Note that this case involves issues that are similar to issues raised in *Ionia County Intermediate Education Association, MEA/NEA*, 30 MPER 18 (2016); Case No. CU15 H-024, issued on August 15, 2016, which is also on appeal before the Court of Appeals.

In *Grand Traverse Co & Grand Traverse Co Sheriff*, Case Nos. C16 E-050 thru C16 E-053, issued August 16, 2017, the Commission determined that the employers breached their duty to bargain by increasing the employees' share of health insurance premium costs during the term of the agreements from the 6% specified in the agreements to 20%. Although a public employer can choose which Act 152 cost sharing option it will comply with, that choice must be consistent with the employer's obligation to pay medical benefit plan costs under the terms agreed upon in the collective bargaining agreement. At the time of the preparation of this report, this case is on appeal to the Michigan Court of Appeals.

MERC decisions, including case summaries, are posted on the agency's website located at www.michigan.gov/merc. You may also find information on the agency's website regarding the current status of the cases on appeal.

ULP activity at MERC during FY 2017 is reflected in the following charts:



“FREEDOM” (RIGHT) TO WORK (FTW)

In December 2012, Michigan became the 24th state to enact “Freedom (Right) to Work” laws with the passage of Public Acts 348 and 349 of 2012. Public Act 348 amended the Labor Relations and Mediation Act (LMA) and applies to most private sector employees, while Public Act 349 amended the Public Employment Relations Act (PERA) and applies to most public sector employees. Both laws became effective on March 28, 2013, and make it unlawful to require an employee to join a union or pay union dues or agency fees as a condition of obtaining or continuing employment.

Under FTW laws, covered employees have the right to voluntarily choose to do, or not to do, any of the following:

- Organize together or form, join, or assist in labor organizations;
- Engage in lawful concerted activities for the purpose of collective negotiation, bargaining or other mutual aid and protection; and
- Negotiate or bargain collectively with their employers through representatives of their own free choice.

Statutory Construction of FTW by MERC

During FY 2017, the Commission reviewed issues involving the application of 2012 PA 349 that were similar to those addressed in FY 2015 & 2016, as well as an issue of first impression. In *Clarkston Community Schools*, Case Nos. C15 K-148 & CU15 K-039, issued September 18, 2017, the Commission addressed the consequences of an unlawful union security clause for the union and employer. The employer and union included union security clauses in the collective bargaining agreements that they had entered into in 2014 and 2015. The Commission found that by including the union security clause in the 2015 collective bargaining agreement, the union and employer violated the prohibition against requiring an individual to pay fees to a labor organization as a condition of continuing public employment under § 10(3) of PERA. Additionally, the Commission found that by violating § 10(3) of PERA, the employer and the union are liable for a civil fine of \$500 each under § 10(8) of PERA. At the time of the preparation of this report, this case is on appeal to the Michigan Court of Appeals.

Also in FY 2017, the Court of Appeals issued its decision in which the Court majority affirmed the Commission's decision in *Taylor Sch Dist*, 28 MPER 66 (2015). In a split opinion, the Court of Appeals affirmed MERC's decision finding that the employer and the union violated PERA by entering into a ten-year union security agreement in an attempt to circumvent Michigan's Right to Work statute. *Taylor Sch Dist v Rhatigan*, 318 Mich App 617 (2017). The Court affirmed MERC's conclusion that the Employer and the Union violated § 10(1)(a) and (c) and § 10(2)(a) and (c) respectively, but not § 10(3) as the charging parties did not allege a violation of § 10(3). This case is currently before the Michigan Supreme Court on application for leave to appeal. The application has not yet been granted.

Subsequently in FY 2017, the Court of Appeals issued a published consolidated opinion affirming the Commission's decisions in *Saginaw Education Association* 29 MPER 21 (2015); *Standish-Sterling Educational Support Personnel Association, MEA* 29 MPER 52 (2016); and *Grand Blanc*

Clerical Association, MEA, 29 MPER 57(2016) See *Saginaw Education Association v Eady-Miskiewicz*, 319 Mich App 422 (2017). In its consolidated opinion, the Court of Appeals affirmed MERC's findings that the Michigan Education Association (MEA) violated § 10(2)(a) of PERA by refusing to allow the charging parties to resign their union memberships at will and outside of the MEA's August window period. The Court agreed with MERC's reasoning that restricting the opportunity to resign from a union to one month of the year effectively forced continued union affiliation. Thus, the Court concluded that MERC correctly recognized that it had jurisdiction over situations in which a labor organization restrains or coerces public employees in the exercise of the rights guaranteed in § 9 of PERA. Additionally, the Court found that MERC correctly held that the right to cease financially supporting a union may be waived if the waiver is clear, explicit, and unmistakable. The agreements upon which respondent unions relied did not constitute such explicit and unmistakable waivers of the charging parties' statutory right to refrain from union membership. Each of these cases is currently before the Michigan Supreme Court on application for leave to appeal.

Additionally in FY 2017, the Court of Appeals affirmed the Commission's decision in *Teamsters (Beutler)*, 29 MPER 46 (2015). In the appeals court case, the Court agreed with MERC that this matter is distinguishable from the *Saginaw* case and the other cases decided by the Court along with *Saginaw*. See, *Teamsters Local 214 v Beutler*, Michigan Court of Appeals decision issued August 10, 2017 (Docket Nos. 330854). The Court agreed that Beutler had voluntarily remained a member of the union after the expiration of the collective bargaining agreement containing a union security clause. She had also signed an agreement with the union providing that her obligation to pay dues was not dependent upon her union membership and that she was obligated to continue to pay dues unless she gave notice of her revocation of her dues assignment within the agreed-upon window period. The Court agreed with MERC that Beutler had given a "clear, explicit, and unmistakable waiver of [her] statutory right to discontinue union support at will." This case is currently before the Michigan Supreme Court on Beutler's application for leave to appeal.

Detailed information regarding Michigan's FTW laws and the impact on MERC's processes can be found on the agency's website located at www.michigan.gov/MERC. You may also find information on the agency's website regarding the current status of the cases on appeal.

MEDIATION – CONTRACT AND GRIEVANCE

Mediation Overview

When Michigan's Labor Relations and Mediation Act (LMA) was enacted in 1939, it authorized employees working in the State's private sector, not covered by the National Labor Relations Act, to organize and engage in collective bargaining. The LMA sets forth a public policy statement supporting the use of mediation services through a governmental agency to aid parties in the voluntary resolution of workplace disputes and to avoid labor strikes and lockouts in private sector employment. With the enactment of the Public Employment Relations Act (PERA) in 1965, public employees were afforded the right to organize, and the mediation services established under the LMA were extended to public sector employment in Michigan.

The Mediation Division of the Bureau of Employment Relations (BER) assists employers and unions in the settlement of disputes involving contract negotiations and grievances in both the public and private sectors. Other services provided by the mediation division include: fact finding; compulsory arbitration; grievance arbitration; last offer elections; creating and participating in labor-management committees; and training in collaborative negotiations.

Contract Mediation

Section 7 of PERA authorizes the labor organization or the public employer to request that the Commission intervene and mediate matters, including disputes concerning negotiation of labor agreements and the alleged violation of a labor agreement. Mediation is a non-binding process in which a neutral third person assists the parties to resolve their dispute. In collective bargaining, the parties should seek to resolve as many issues as possible on their own; however, when it becomes apparent to one or both parties that they are unable to reconcile their differences or are not making adequate progress towards doing so, labor mediation may be appropriate. PERA discusses the mediation process and provides: "At least 60 days before the expiration date of a collective bargaining agreement, the parties shall notify the Commission of the status of negotiations." Private sector entities also must file with the Commission, as the National Labor Relations Act requires a 60-day notice to both federal and state mediation agencies. Thereafter, a mediator will be assigned to the case, and the parties are provided with the contact information for the assigned mediator.

Grievance Mediation

Mediation is often used to resolve grievances arising under a collective bargaining agreement, either as the final step in the grievance procedure or as a step prior to arbitration. A mediator is generally available within a few weeks of the request for mediation assistance. The process is flexible, since the parties may develop a remedy without being bound by the contract language as an arbitrator would be. If the contract language is ambiguous, a mediator may assist in developing a mutually agreeable resolution to the dispute. A mediator has no authority to render a binding decision. Parties are able to avoid the expense and rigidity of the grievance arbitration process by mutually resolving contract grievances with the aid of MERC labor mediators. Also, of great importance, mediated settlements avoid the often contentious environment of an arbitration hearing and can have a significant impact on preserving a harmonious relationship between the parties.

Mediation Activity FY 2017

During FY 2017, the Mediation Division received and processed 1,988 Status of Negotiations notices indicating that a collective bargaining agreement is open for negotiations. Mediation assistance was initiated in 236 of those negotiations resulting in 625 mediation conferences. In addition, the Mediation Division received 266 requests for mediation assistance in contract grievances. There were 293 grievance mediation conferences. Mediator involvement resulted in the settlement of 184 collective bargaining agreements and 273 contract grievances, with some settled cases related to carry-over activities of disputes initiated in the prior fiscal year. (See charts that follow). These numbers reflect a steady level of grievance mediation activity throughout the fiscal year. It is notable that a remarkable number of grievances mediated during FY 2017 were settled in mediation, avoiding the significant costs of arbitration in dollars and the time required

to prepare and present a case in arbitration. A more detailed description of grievance mediation can be found below.

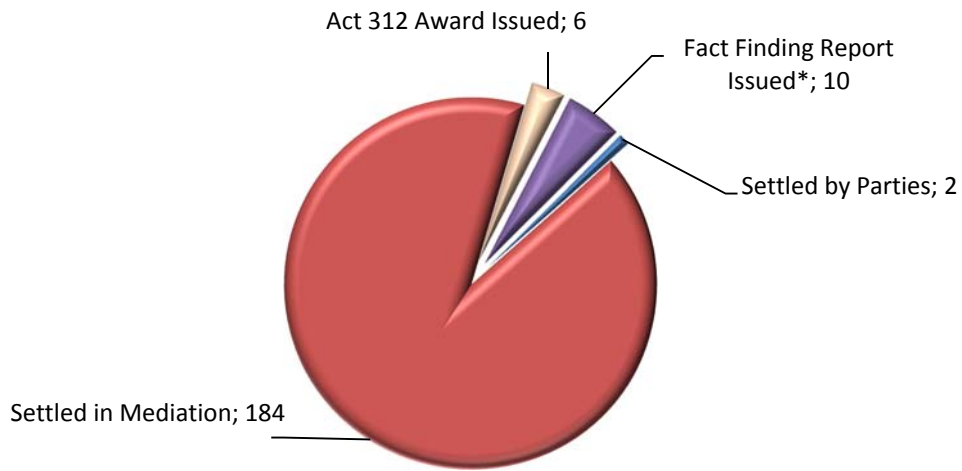
During FY 2017, unions continued to be under pressure from their membership to settle contract negotiations early. Retroactivity was eliminated from most public sector settlements by 2011 PA 54. In addition, PA 54 requires public sector employees to pay any increased cost in health insurance following expiration of a collective bargaining agreement and until a successor agreement is executed. Prior to PA 54, retroactive payment of negotiated wage increases was common and employers typically absorbed the increased cost of health insurance during the period of negotiations. Unions now are more frequently attempting to engage in early bargaining and, consequently, earlier mediation as they attempt to reach a satisfactory settlement prior to contract expiration to avoid a potentially significant financial impact on the membership following contract expiration and until a successor contract is in place.

In addition to this, some bargaining units are comprised of employees who are eligible for Act 312 arbitration and some employees who are not eligible. Under Public Act 322 of 2014, however, employees who are eligible for Act 312 arbitration are exempt from the provisions of 2011 PA 54, prohibiting retroactivity after contract expiration. As a result, in mixed bargaining units, some employees can receive full retroactivity of negotiated increases and salary schedule step advancement, while others were prohibited from receiving retroactivity. In addition, at contract expiration, those employees not eligible for Act 312 arbitration are responsible for paying 100% of health insurance cost increases until a successor agreement is executed, while the Act 312 eligible employees are not. During FY 2017, there were instances where Act 312 eligible employees were willing to hold out for a potentially better settlement through Act 312 Arbitration, without tangible financial risk. The employees not eligible for Act 312, however, faced immediate financial loss upon contract expiration.

Additionally, PA 349's prohibition on union security language does not apply to Act 312 eligible employees. Therefore, those employees not eligible for Act 312 arbitration, if frustrated by the slow pace of negotiations and the significant financial impact imposed on them at contract expiration, may withhold union dues without fear of retaliation since they are no longer compelled to financially support the labor organization representing them. In some mixed units, the union and the employer found it advantageous to split the bargaining unit along lines of Act 312 eligibility and ineligibility and to negotiate separate agreements.

The charts below summarize the key areas of need of the Mediation Division activity during FY 2017:

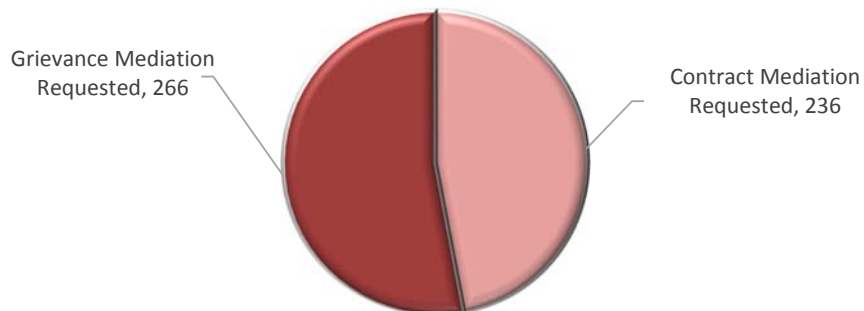
CONTRACT MEDIATION ACTIVITIES (FY 2017)



*After Fact Finding, parties typically return to mediation.

As indicated in the following chart, grievance mediation has grown to be a popular service provided to the agency's constituents and has continued to represent a significant activity within the BER Mediation Division.

MEDIATION REQUESTED (FY 2017)



The Michigan Employment Relations Commission/Bureau of Employment Relations, encourages labor and management representatives to consider utilization of the grievance mediation service available through the Mediation Division, at no cost to the parties. Grievance mediation is a voluntary, informal process using a skilled labor mediator to assist the parties in reaching a mutually acceptable resolution to a grievance dispute when there is an alleged violation of a collective bargaining agreement.

MERC mediators have an extensive background in contract administration and typically have handled numerous grievance disputes – some involving arbitration. By mutual agreement between the employer and the union or when included as a step in the contract’s grievance procedure, both parties present the basis of their position to the mediator. The mediator will become familiar with all aspects of the case and will seek to assist the parties to reach a satisfactory settlement that will resolve the dispute. An experienced mediator may also take an unbiased look at the dispute and share a neutral perspective on the parties’ respective positions. A mediator’s assessment of the weak points in a case or clarification of the underlying issue of the grievance may prompt one or both parties to view the dispute in a different light and seek resolution in lieu of arbitration. Settlement options may include granting the grievance, withdrawal of the grievance or a compromise. Ultimately, however, settlement of the grievance is within the control of the parties. The mediator is present only as a highly skilled, confidential neutral to assist in settling the dispute or to offer suggestions and recommendations.

The many advantages to grievance mediation include:

- Expedience – faster resolution
- No Cost for the service
- Less adversarial; hence, promotes cooperation
- Not tied to a contract remedy; therefore, resolves the “real” issue
- Very effective: It works (**with about a 90% success rate**)

It is not unusual for an arbitration hearing to take months to schedule. After the hearing, there is frequently a 30-day time period for the parties to file post-hearing briefs. After submission of briefs, there may be a wait of at least another 30 days for an award. On the other hand, a mediation conference can usually be scheduled quickly. There are no post-hearing briefs. There is also no need to wait for a decision if the dispute is resolved during the mediation conference.

Arbitrators work independently and for a fee. Therefore, an arbitrator will charge the parties a set rate per day, plus expenses. The per diem rate is applied to time spent for travel, day(s) of hearing, reviewing post hearing briefs, research and preparation of an award. The MERC/BER Mediation Division, maintains a staff of experienced labor mediators who are available for grievance mediation.

The win-lose environment of a formal binding arbitration hearing may result in each of the respective parties attacking the credibility of the other’s witnesses. The honesty of testimony is subject to challenge, potentially undermining any previously existing spirit of cooperation between labor and management.

Grievance mediation is far less formal than most arbitration hearings. During grievance mediation, the mediator will often meet with the parties separately to gain more in-depth knowledge about

circumstances related to the grievance. In that more relaxed environment, the parties are free to open up and discuss the issue candidly. If the discussion leads to the issue being resolved in mediation, the resolution is reached without placing either party in the 'hot seat' and without the need to attack and destroy one another's witnesses.

A spirit of cooperation can be developed in grievance mediation. Ultimately, since the parties themselves are in control of the resolution, the grievance may be settled to the satisfaction of both parties. When labor and management come together to discuss their differences in a productive, non-adversarial (or at least less adversarial) environment, the cooperative skills and trust they develop can make their relationship stronger than before. If resolution still escapes them after an honest and sincere effort, they can then move on to arbitration with greater understanding - less as combatants and more as advocates of differing opinions.

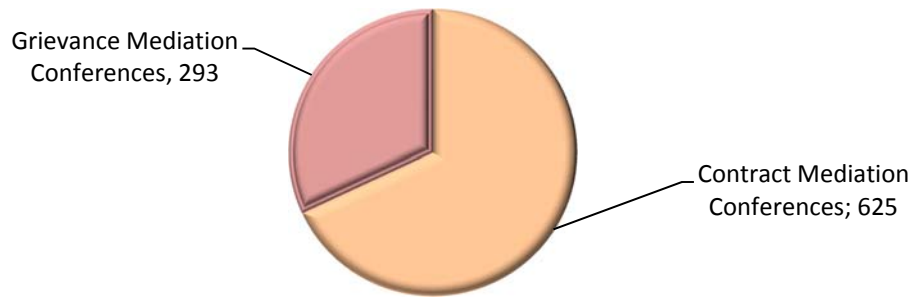
The authority of the arbitrator comes from and is limited by the contract. An arbitrator has no authority to add to, delete from or modify the terms of a collective bargaining agreement. If the source of the dispute is rooted outside the language of the contract, an arbitrator may have authority to make an award disposing of the grievance, but has no authority to resolve the underlying issue. A mediator has no binding authority and, therefore, is not limited by the contract. A mediator can be expected to ask probing questions about a dispute in an attempt to uncover the true essence of the issue. With that knowledge, the mediator will work with the parties and assist them in finding a means to resolve the issue, not just the grievance.

Grievance mediations are usually completed in one session, while contract mediation frequently requires numerous conferences to reach settlement due to the number and complexity of the issues. Consequently, while grievance mediation requests may compete with requests for mediation of contract negotiations, the time involved in resolving grievances is less demanding upon the workload of BER.

In an effort to promote awareness of the grievance mediation service provided by the agency, staff members consistently speak of the service during constituent presentations and training, including the MERC Basics program. Also, whenever BER receives notice that a contract is open for negotiations, along with contacting the parties with a case number and the name of the assigned mediator, the BER mediation secretary provides grievance mediation informational material for the benefit of the parties.

To initiate grievance mediation, either party may download and file a Request for Grievance Mediation form, found on the MERC website (www.michigan.gov/merc) under the Forms link. A mediator will be assigned and will promptly contact the parties to schedule a mediation conference.

MEDIATION CONFERENCES (FY 2017)



LABOR-MANAGEMENT COOPERATIVE ACTIVITIES

Collaborative Bargaining

Many employers and labor organizations believe that a cooperative approach to collective bargaining is more effective than the traditional, adversarial approach. In addition to traditional mediation, the Commission has adopted a collaborative approach to collective bargaining, referred to as the “Collaborate to Contract” process. The collaborative approach is intended to avoid a situation in which one party wins only if the other loses. The process focuses on open and frank discussions, free exchange of information, an examination of issues, interests, and mutual concerns, and the use of agreed-upon standards to judge options. The ultimate goal is to improve the overall bargaining relationship, while the more immediate goal is to resolve the particular contract dispute at issue. In most cases, bargaining teams are jointly trained in the process. Following training by a MERC mediator, the mediator may be scheduled to assist during the initial collaborative bargaining sessions as a resource person, while parties become comfortable with utilization and facilitation of the collaborative bargaining process. During FY 2017, there was an increase in collaborative bargaining training activity over recent years, with additional training already scheduled early in FY 2018. Training in collaborative bargaining was conducted in the following locations in FY 2017:

- Grand Rapids Community College
- City of Mt. Pleasant
- Saint Louis Community Schools
- Holland Community Schools

Labor-Management Committees

The Mediation Division participated in the following labor-management committees comprised of labor and management representatives with the goal of assisting in facilitating positive relations between labor and management groups:

- The **Michigan Labor Management Association (MLMA)** provides periodic labor relations seminars and hosts a popular annual golf outing that brings labor and management teams together in a welcoming recreational activity. Bureau staff actively participate on the advisory board of MLMA and in the Association's programs, providing logistical support and serving as expert presenters on topics of interest to the labor relations community. During FY 2017, BER staff presented at a labor-management conference in Lansing, Michigan, hosted by MLMA.
- The **Kalamazoo Area Labor-Management Committee (KALM)** sponsors a regular luncheon meeting (usually monthly) with presenters on current labor relations topics. In addition, the KALM hosts an annual dinner program to recognize labor and management negotiation teams that have successfully reached settlement of a collective bargaining agreement in the prior year.
- The **Muskegon Area Labor-Management Committee (MALMC)** sponsors an annual labor-management conference. In addition, MALMC annually hosts an innovative student collective bargaining program, during which union and management labor relations professionals work as advisors to high school students and guide them through a mock collective bargaining exercise. BER mediators attended the program and provided mediation expertise to the participants.
- The **Upper Peninsula Labor-Management Council (UPLMC)** provides an annual conference to several hundred attendees across the Upper Peninsula focusing on relevant and timely topics. The Council also sponsors student collective bargaining exercises for high school seniors.

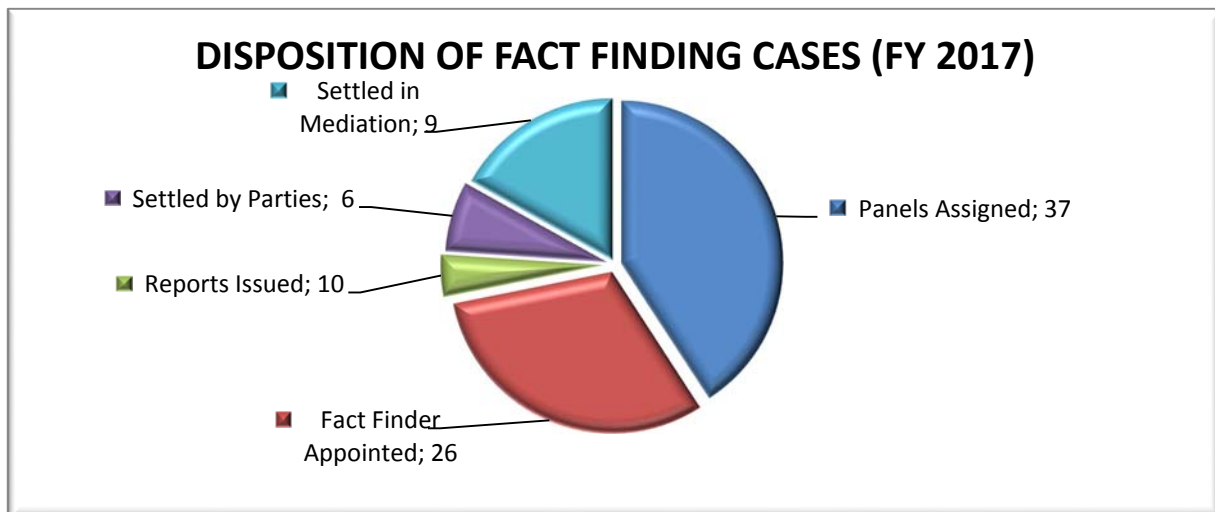
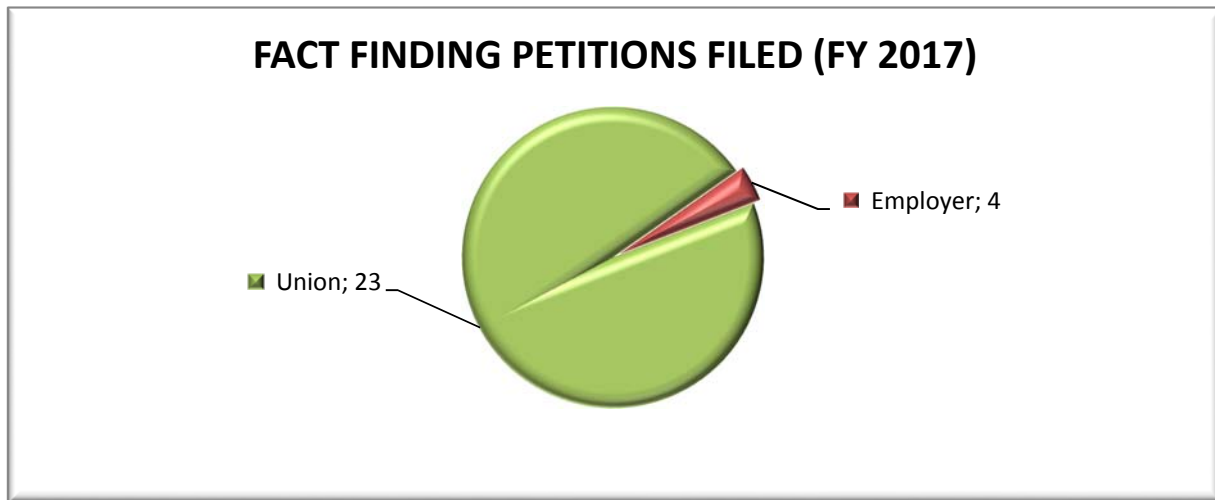
FACT FINDING & ACT 312 COMPULSORY ARBITRATION

When collective bargaining and mediation assistance do not result in a complete final labor agreement, a party may file a petition for fact finding, or, if eligible, compulsory arbitration (Act 312). A neutral fact finder or Act 312 arbitrator is appointed by the Commission to conduct hearings and issue a written, non-binding recommendation (fact finding) or a binding award (Act 312).

Fact Finding

MERC fact finding is available to public sector employers and employees subject to PERA who are not eligible for compulsory arbitration under Act 312. Although the recommendation of a fact finder is not binding, it is helpful as the parties return to negotiations to resolve their differences and, hopefully, reach contract resolution. Since labor strikes in the public sector are prohibited under PERA, fact finding is the final impasse resolution procedure available to eligible public sector employees.

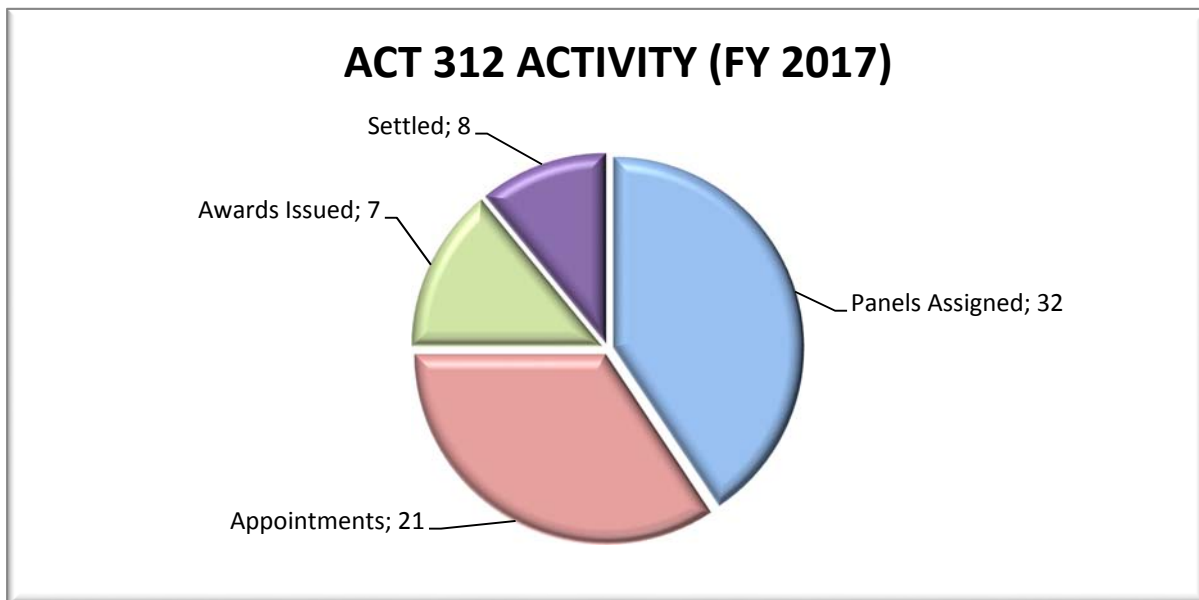
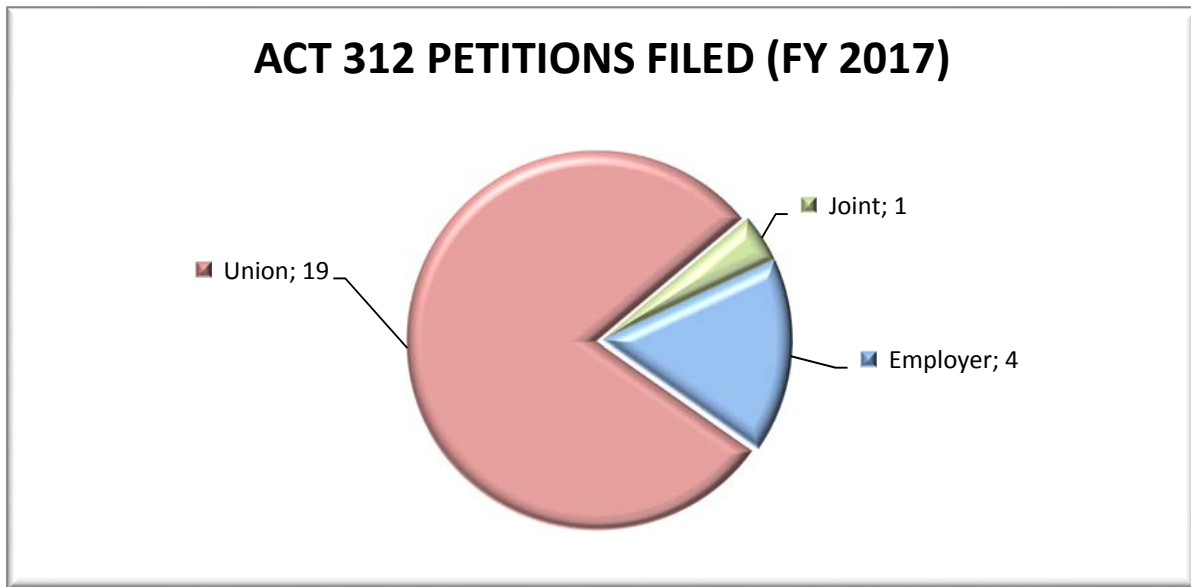
Fact finding activity during FY 2017 included:



Act 312- Compulsory Arbitration for Municipal Police and Fire Departments

In 1969, the Michigan Legislature enacted Act 312 to provide certain employees of municipal police and fire departments a binding procedure for resolving negotiations over a labor contract. In 2011, the Act was amended in various ways to expedite the process. Employees generally covered by Act 312 include: police officers, firefighters, emergency medical personnel as well as emergency telephone operators employed by a municipal police or fire department or certain authorities, districts or boards created by these local units of government. Act 17 of 1980 provides similar binding arbitration for state police troopers and sergeants.

Act 312 activity during FY 2017 is as follows:



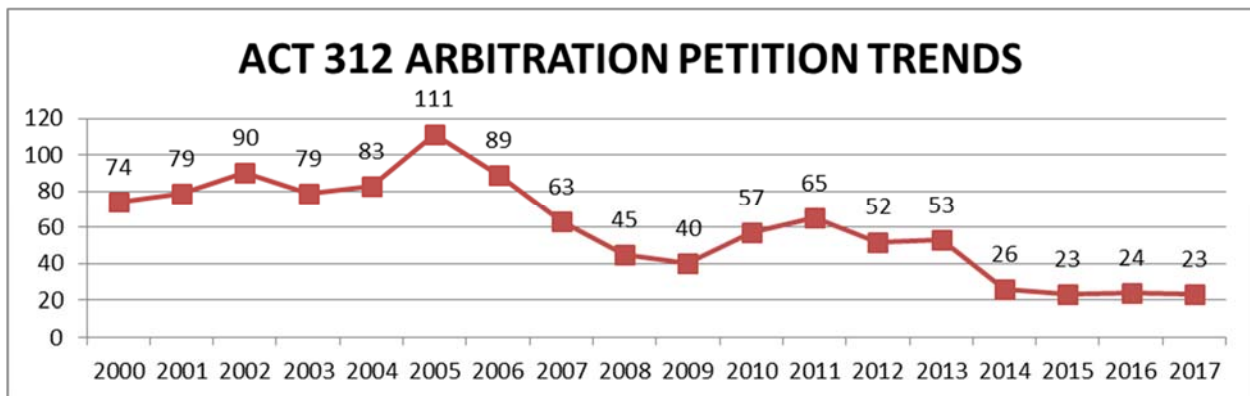
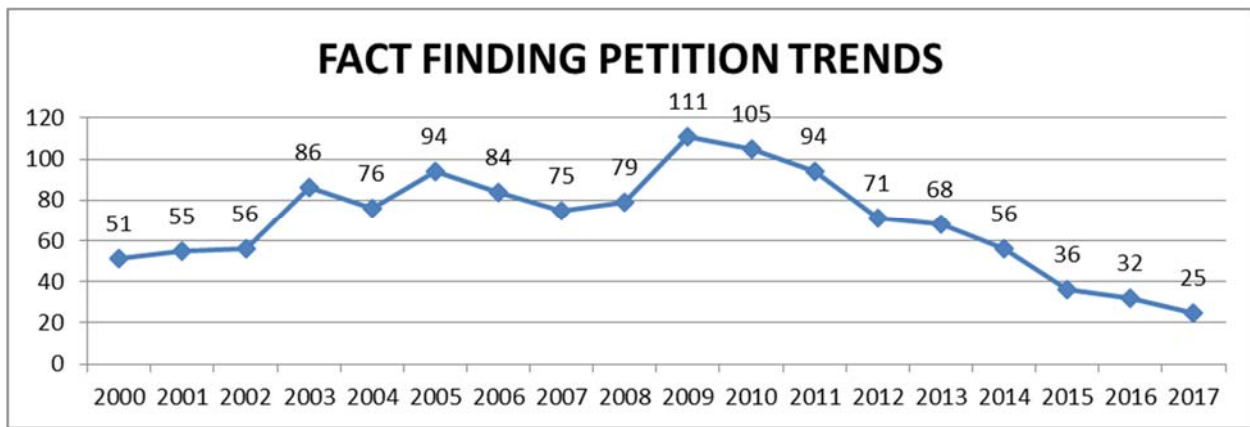
FACT FINDING AND ACT 312 ARBITRATION TRENDS

Petitions filed to initiate Act 312 Arbitration have shown a steady decline over the past decade. The 2011 amendment to Act 312 streamlined and expedited the process and made significant changes in procedure, such as requiring that final offers on economic issues be presented at the beginning of the hearing rather than at the end. Also included in the amendments was a specific provision requiring mediation as a prerequisite to filing a petition for Act 312 Arbitration. Prior to the amendment, petitions for Act 312 Arbitration were routinely filed before contacting the mediator, and the mediator had limited time to attempt to schedule a mediation conference.

Mediation involvement has had a significant impact on the number of settlements reached without the time and expense to the parties of engaging in an Act 312 Arbitration hearing.

Petitions to initiate Fact Finding have also been dramatically reduced during the same period. The impact of 2011 PA 54, as outlined below, and the subsequent request for earlier mediation of labor disputes, combine to make early mediation a critical and highly effective part of the collective bargaining process. This is especially so in difficult labor disputes that may be settled without the need for a potentially lengthy Fact Finding process.

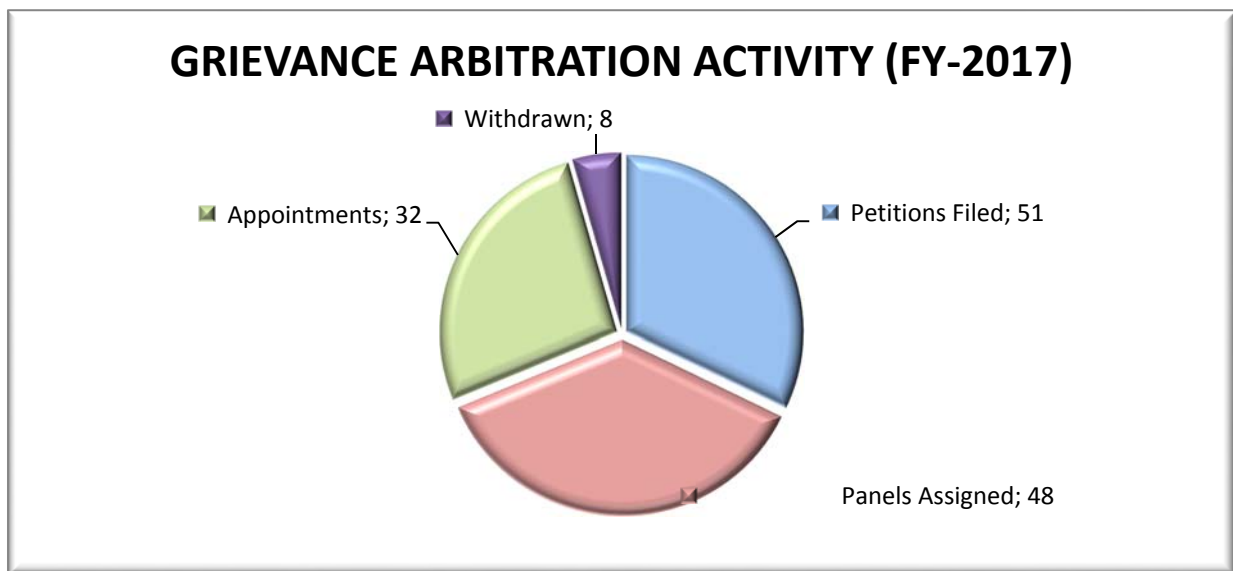
The charts below reflect the clear trend of the parties who, with mediation assistance, are able to reach settlement of contract negotiations without the need to proceed with Fact Finding or Act 312 Arbitration.



GRIEVANCE ARBITRATION

Pursuant to its authority to aid in resolving labor disputes, MERC assists parties in selecting a skilled arbitrator to perform grievance arbitration in the field of labor relations. Parties may utilize this service subject to the terms of their labor contract or by mutual written agreement. MERC's involvement is limited to assisting in the appointment of a grievance arbitrator. While there is no charge for MERC's role in the process, the daily rate set by the arbitrator is paid by the parties, along with any other costs associated with the arbitration process. MERC does not enforce or vacate awards and will not collect fees.

Grievance Arbitration activity utilizing MERC services during FY 2017 was:



UNION AUDITS

In 2014, the Michigan Legislature amended PERA to require that labor organizations representing public sector employees in the state provide an independent audit to MERC. PERA Section 423.210(9) specifically provides:

Sec. 10 (9) By July 1 of each year, each exclusive bargaining representative that represents public employees in this state shall have an independent examiner verify the exclusive bargaining representative's calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year and shall file that verification with the commission. The commission shall make the exclusive bargaining representative's calculations available to the public on the commission's website. The exclusive bargaining representative shall also file a declaration identifying the local bargaining units that are represented. Local bargaining units identified in the declaration filed by the exclusive bargaining representative are not required to file a separate calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment.

Registration forms and Independent Audits must be submitted to MERC in pdf format via email to www.unionaudits@michigan.gov, using an agency coversheet and the assigned identifying number.

During FY 2017, the Commission received 594 union audits from public sector labor organizations. The posted audits and information for registering to file an audit are available on the Commission's website.

FY 2017 TRAINING AND EDUCATION

MERC BASICS

MERC/BER first presented a very well-received *MERC Basics* training program on August 20, 2014 in Troy, Michigan, co-sponsored by the Metropolitan Detroit Bureau of School Studies. The program focused on the basics of labor relations in public sector collective bargaining in Michigan and the services available through BER. The training session was created in response to a request from a constituent advisory committee, based upon the observations that a large number of recently-appointed labor relations managers and union representatives might benefit from a greater understanding of MERC/BER programs and processes. The *MERC Basics* training program was developed by BER staff, and the kick-off presentation was presented by Commission Chair Edward Callaghan, Mediator Sidney McBride and Mediation Supervisor James Spalding.

The great success of this initial offering of the *MERC Basics* training program prompted the Bureau to offer this training opportunity in other parts of the State, as well, and it has been presented in several locations each year since 2014.

During FY 2017, the *MERC Basics* program was presented at the following Michigan locations:

- Detroit – Wayne State University Labor Program hosted a one-day conference on dispute resolution, including morning presentations from the National Labor Relations Board, Federal Labor Relations Authority, Federal Mediation and Conciliation Service and the Federal Service Impasse Panel. The afternoon program was dedicated to the MERC Basics presentation.
- Houghton – Hosted by Michigan Technological University, the presentation was attended by numerous labor and management representatives from across the far northwestern part of Michigan's Upper Peninsula.
- Troy – Hosted for a second time by the Metropolitan Detroit Bureau of School Studies, this presentation was again open to area labor and management representatives, primarily from public schools. The audience included union representatives, management representatives, bargaining team members and attorneys.

The MERC Basics presentation continues to be a popular and sought after training program that consistently receives highly positive reviews from the attendees, who come away with a significantly increased understanding of MERC and BER programs, policies and procedures. Also during FY 2017, the BER Mediation Division was requested to present two sessions of the MERC Basics program at the Great Lakes Water Authority on October 12, 2017. A morning session and an afternoon session will be structured to allow the training to be provided to a large number of attendees.

MERC-NLRB Joint Program

As a further indication of the collaboration between the National Labor Relations Board and MERC, the agencies will conduct a joint presentation highlighting the similarities and differences between them and their processes and procedures. The presentation, entitled “*NLRB and MERC – Similarities and Distinctions – Working in Tandem to Promote Peace in Public/Private Sector Labor Relations,*” will take place at the Bernard Gottfried Memorial Labor Law Symposium on October 19, 2017 at Wayne State University Law School.

TRAINING PRESENTATIONS AND OUTREACH

Training Presentations

Education and training are important components of the mission of MERC/BER. BER staff regularly respond to request from constituents to provide training on various topics and to serve on panels presenting to labor and management organizations. The following training programs and presentations were conducted during FY 2017:

- November 15, 2016 Wayne State University, *MERC Basics* as part of a Dispute Resolution Program.
- December 1, 2016 City of Springfield and AFSCME Labor/Management Committee Training.
- January 26, 2017 Interest Based Bargaining training for City of Mount Pleasant and its bargaining units.
- February 2, 2017 City of Springfield and AFSCME Labor/Management Committee Training.
- February 23, 2017 Wayne State University Labor Studies Program – A Panel Presentation, “*Effective Mediation of Labor Disputes in Public & Private Sector Employment*”.
- February 28, 2017 Muskegon Area High Schools, Mock Collective Bargaining.

- April 6, 2017 Interest Based Bargaining training for Grand Rapids Community College and its faculty bargaining unit.
- April 18, 2017 Interest Based Bargaining training for Saint Louis Public Schools and the MEA teachers' unit.
- April 20, 2017 Institute of Continuing Legal Education 42nd Annual Labor & Employment Law Institute NLRB/MERC Update
- May 25, 2017 Michigan Labor Management Association, 2017 Spring Conference, "*Opportunities in Uncertain Times, Labor and Employment Outlook/Updates for 2017*"
- July 18, 2017 Interest Based Bargaining training for Grand Rapids Area Mental Health Services (Network 180) and UAW.
- August 18, 2017 *MERC Basics* presentation at Michigan Technological University for area labor and management advocates and representatives.
- August 24, 2017 *MERC Basics* presentation in Troy, hosted by the Detroit Metropolitan Bureau of School Studies.
- August 29, 2017 Interest Based Bargaining training for Holland Public Schools and the MEA teachers' unit.
- September 18, 2017 Labor Management Committee and Interest Based Problem Solving training presentation for the Michigan Department of Health and Human Services and UAW Local 6000.

Outreach and participation in Collective Bargaining training exercises were provided to:

- Grand Valley State University, labor law classes. The MERC mediation supervisor served as the arbitrator in a mock grievance arbitration on April 19, 2017 and, again, on November 2, 2017, providing first-hand experience in the arbitration process to labor law students.
- Muskegon Area Labor/Management Committee, student collective bargaining program. MERC mediators attended the program on February 28, 2017 and offered mediation expertise to the area's high school student participants.

Interagency Cooperation

MERC and BER are strong advocates for interagency cooperation and are thrilled to work closely with other state agencies to benefit our respective organizations as we strive to meet our goals and, ultimately, to benefit the citizens of the State of Michigan. MERC and BER have established ongoing productive relationships with the following:

- Michigan Department of Education

The Michigan Department of Education, State Aid and School Finance Section, coordinates regularly with BER in an ongoing effort to share information on public schools in deficit or facing financial distress. That information provides a significant level of understanding of the financial status of public school districts and the potential impact of respective budgets on the collective bargaining process.

In addition to promptly sharing quarterly reports relative to deficit districts, a representative from the Michigan Department of Education regularly participates on the panel of presenters at the MERC Act 312 Arbitrator and Fact Finder training program, providing MERC panel members with an enhanced understanding of public school financial reports.

- Michigan Department of Treasury

The Michigan Department of Treasury, like the Michigan Department of Education, regularly participates on the panel of presenters at the MERC Act 312 Arbitrator and Fact Finder training program, providing the MERC panel of arbitrators and fact finders with an enhanced understanding of municipal financial reports and sources of funding for local units of government. This information and understanding is critical for Act 312 arbitrators, who are charged with issuing a binding award for public safety union contract disputes and a recommendation in a Fact Finding case.

- Library of Michigan

The Library of Michigan, in cooperation with MERC and BER, has made significant progress in making MERC Decisions readily available to the public through its Governing Michigan website. The Library has scanned MERC Decisions dating back to the first Decision, dated August 16, 1965, through all of 2015. Decisions through 2016 should be posted on the MERC website by the first quarter of 2018.

- Michigan Department of Health and Human Services

The BER Mediation Division responded to a request to assist DHHS and UAW 6000, which are seeking to implement negotiated language establishing a labor-management committee. They are also seeking training on an interest based problem solving model. Training for their state-wide labor-management committee is scheduled for November, 2017 and additional regional training programs will be scheduled for the Spring of 2018. The labor-management committee is intended to facilitate productive and harmonious relationships in the DHHS workplace.

OTHER FY 2017 HIGHLIGHTS

BUDGET

The authorized and available appropriations for the Bureau of Employment Relations during the 2017 fiscal year was \$4,198,900. The Bureau is funded exclusively from State Restricted funds.

DASHBOARDS (SCORECARD PERFORMANCE SUMMARY)

In 2011, Gov. Rick Snyder established the Michigan Dashboard to measure progress in meeting key objectives and to serve as a catalyst for positive change in State government. The three key metrics identified by BER were: Issuance of Orders within 12 Months of Record Close; Consent Elections conducted within 65 Days of Filing Petition; and Mediated Labor Contract Disputes Closed without an Act 312 Award or Fact Finding Report. The following chart represents the overall average of BER’s Dashboard performance during the 12 months in FY 2017.

MiScorecard Performance							
Agency: Employment Relations				Legend:			
Director Ruthanne Okun				Green 90% or greater of target			
Period: FY 2017				Yellow >=75% to <90% of target			
SCORECARD				Red less than 75% of target			
				White not applicable			
Metric	Status	Trend	Target	Current	Previous	Frequency	Metric Definition
Employment Relations							
Issuance of Orders	Green	↓	90%	97.8%	98.9%	Annual	% Issued within 9 Months of Record Close
				92 of 94	90 of 91		
Conduct Consent Elections	Green	↑	80%	88.8%	84.7%	Annual	% Held within 65 Days of Filing Petition
				72 of 81	83 of 98		
Mediate Labor Contract Disputes	Green	↓	80%	88.3%	93.0%	Annual	% Contract Negotiations Closed w/o 312 Award or Fact Finding Report
				152 of 168	160 of 172		

For FY 2018, BER has revised its “Issuance of Orders” target. It will now measure the percentage of Orders issued within 9 months of record closure, instead of the 12 month target utilized in FY 2017.

PRIORITIES

During FY 2016, the Bureau of Employment Relations established the following priorities to achieve in FY 2017:

- Drafting and implementation of rules to administer the recently-passed legislation, PA 194 of 2016, regarding public school employee strikes and employer lockouts.
- Implementation of a new case management system to replace our outdated ORACLE system.

- Succession planning to address the potential retirement of 75% of our staff within the next 5 years.
- Continued integration of the Wage and Hour division into BER.

RULE AMENDMENTS

In 2017, the Commission amended its General Rules to reflect changes in the law that occurred as a result of the enactment of 2016 PA 194, a law that took effect on September 19, 2016. 2016 PA 194 amended the Public Employment Relations Act (PERA) to revise the process for handling teacher strikes and lockouts in order to provide a more effective and efficient means for addressing these violations of PERA. The revisions to the Commission's General Rules were posted on MERC's website under the "What's New" link and were approved by the Office of Regulatory Reinvention on July 27, 2017. The Commission also posted on its website the forms required by 2016 PA 194 and a set of frequently asked questions pertaining to the PA 194 in FY 2017.

EMPLOYEE ENGAGEMENT

In the past several years, employees in the Bureau of Employment Relations have completed the Employee Engagement Survey conducted by Price Waterhouse Cooper (PWC), which is administered to all State of Michigan employees. Employee engagement is defined as the strong and positive connection between a person and his or her job.

The Survey is an important part of Governor Snyder's reinvention of state government and was designed to "help ensure a customer-focused government and a work culture in which employees are highly engaged, respected, and valued; and have the opportunity to express and explore views on issues related to their jobs." Governor Snyder recognizes that employee engagement inspires significant outcomes of real value because when employees are truly engaged, the State of Michigan reaches its full potential.

In 2016, the Bureau of Employment Relations had an employee engagement score of 92%. Additionally, the Bureau had one of the highest number of employee engagement champions - those employees who have a high level of engagement and a high likelihood of remaining with the State of Michigan, of all agencies in its parent department - the Department of Licensing & Regulatory Affairs.

Even with these remarkable scores, the Bureau submitted an Action Plan in an effort to achieve even better scores when the survey is administered next and also because it is vital to have engaged employees and to respond to their concerns. Targeted in the Bureau's Employee Engagement Action Plan for FY17 and FY18, are the following: (1) sufficient effort is made to obtain opinions, (2) meaningful action has been taken since the last survey, and (3) department leadership is creating a culture of continuous improvement.

The Bureau continues to work on the above action items to promote a more inclusive work environment in which employee engagement is fostered and encouraged.

UPDATED FTW FAQs

In FY 2017, MERC updated its Freedom to Work (FTW) Frequently Asked Questions (FAQs) in order to accurately reflect recent Commission decisions interpreting Michigan's FTW laws. Generally, the FTW laws prohibit union-security agreements, which require that private and/or public employees pay union dues or a service fee as a condition of obtaining or continuing employment. Employees who choose to opt-out of the union, however, are still afforded rights and benefits as members of the bargaining unit.

The updated FAQs are posted on MERC's website under the "Freedom to Work" link.

MERC/BER ACCOMPLISHMENTS

Several significant accomplishments were achieved during FY 2017:

- **Commission Docket Disposition**
MERC is pleased to announce that the Commission docket is current and up to date. The issuance of numerous MERC Decisions have cleared out a series of complex cases and unfair labor practice charges resulting from issues of first impression relating to significant changes in Michigan labor law since 2011.
- **Grievance Mediation Promotional Plan**
In an effort to promote awareness of the grievance mediation service provided by BER, staff members consistently tout the benefits of this of the service during constituent training, including at *MERC Basics* presentations.

Also, during FY 2017, a new process was initiated to promote grievance mediation at a convenient time during contract negotiations between the parties. Whenever BER receives notice that a contract is open for negotiations, along with contacting the parties with a case number and the name of the assigned mediator, the BER mediation secretary includes grievance mediation informational material for the benefit of the parties. As grievance mediation continues to be promoted and the labor relations community is responding, grievance mediation is expected to continue to grow beyond the current level representing virtually half of the labor disputes brought to MERC for resolution.

- **Succession Planning Update**
Due to the highly specialized nature of work performed by BER staff, combined with a large proportion of staff eligible for retirement, succession planning is of vital interest to the Commission. Succession planning was initiated in 2010, and the written succession plan has been updated periodically as the need arises. The most recent update was approved by the Commission in February, 2017.

The purpose of the BER Succession Plan is to ensure a smooth transition as BER responds to planned vacancies due to retirements, unanticipated vacancies and extended absences. In addition to identifying positions likely to be vacant in the near future and the process anticipated to be followed in filling the vacancy, the Succession Plan outlines how work

may be redistributed while a position remains unfilled, whether the vacancy is anticipated or not.

Through the creation of a thoughtful and more comprehensive BER Succession Plan, the agency is poised to continue to move forward seamlessly under any circumstances while continuing to meet its goals and mission without interruption.

- **City of Detroit Bankruptcy Cases**

At the close of the City of Detroit's bankruptcy process, MERC was holding in abeyance sixty-seven (67) cases involving the City which had been filed prior to or during its bankruptcy, mostly unfair labor practice charges. In April 2015, MERC was authorized to resume processing those cases, many of which had become moot in the interim. Labor Mediators sought out opportunities for voluntary withdrawal or voluntary settlement, ALJs re-activated cases which had been suspended mid-way though adjudication, and MERC legal staff initiated action on those cases for which exceptions (appeals) had been stayed. As a result of these efforts, all of the remaining pre-bankruptcy cases were resolved by the end of FY 2017.

- **MERC Deliberations**

Section 3(7) of the Open Meetings Act (OMA) exempts certain agencies from the OMA's requirements when deliberating the merits of a case. Those agencies include the Compensation Appellate Commission, the Employment Security Board of Review, the State Tenure Commission, and the Public Service Commission. Since MERC's responsibilities run parallel to the exempt boards and agencies, MERC staff worked with the Legislature in FY 2017 to ensure amend of the OMA to add the Commission to the list of agencies exempt from the OMA when deliberating the merits of a case. Even with this amendment to the OMA, however, MERC business may be conducted only at an open meeting, and Commission decisions will still be made at a meeting open to the public.

- **MEDIATION AND THE DETROIT CASINOS**

For nearly eighteen (18) years, Detroit's three casinos have increasingly utilized mediation and the services of a State mediator to establish and maintain effective labor-management relations through training and collaborative processes, including:

- Grievance mediation
- Establishment of labor-management committees
- Union steward and supervisor training

Grievance mediation at the casinos

As a result of grievance mediation at the casinos, the number of arbitrations has been drastically reduced in proportion to the increase in number of mediations. These mediations have provided for a faster outcome than waiting to receive hearing dates for arbitration. It should be noted that when employees file unfair labor practice charges against their union for failure to represent, those charges do not go to complaint for mediated grievances. The union does not have to arbitrate grievances, however when accepting a mediator's recommendation to resolve or withdraw the grievance, they show a valiant effort to resolve the issue. This is important because a case for failure to properly represent a bargaining unit member filed by an employee can cause the union to enjoin

the employer. The Unions don't have the ability to restore employment to a discharged employee. Consequently, both the employer and the union expend funds to defend their respective positions. Mediation of these grievances saves this expense.

Labor-management committee meetings

By barring the introduction of specific grievances and limiting the agenda to global issues, both parties can discuss the effects and application of departmental policies at a labor management committee meeting. The parties discuss ideas for implementation of new or revised policies. This improves employee understanding and application of new policies. It assists in the implementation of changes which improve operations without waiting for the contract to reopen for negotiations. Numerous grievances have been avoided by these discussions. Many issues have been preempted and/or resolved by these informal discussions by the committee, which are held on an as needed basis. The parties improve understanding of contract language and its application on a pending agreement.

These committee meetings have improved relationships between the parties or at least allowed the parties to clarify their respective positions by providing for prompt and frank discussion. Such meetings have also facilitated resolution of contract issues in a facilitated environment – one that avoids the potential for emotional outbreaks or heated arguments.

Steward/Supervisor training

The Steward/Supervisor training provided by MERC Mediators has assisted to develop better relationships and trust through improved communications between the parties. This is accomplished by relationship building exercises, which assist the parties to clearly and concisely transmit information to each other in the day to day operations of the facility. It promotes the clear and precise transmission of communications between the parties while adhering to the language in the collective bargaining agreement.

Accordingly, it has been shown that Grievance Mediation, Labor/Management Committees, and Steward/Supervisor training have been successful in improving the communication between the parties and in resolving numerous disputes with reduced need for arbitration or court intervention.

The three casinos located within the City of Detroit each take in over a million dollars of revenue each day and contribute considerable tax dollars which are vital to the City of Detroit's budget. They provide employment for a sizable number of employees, are a tourist attraction for the area, and are a great entertainment source for local citizens and visitors. Labor peace is essential for all of this to continue without interruption, and the above three areas of service provided by MERC mediators are essential to achieving that goal.

MERC WEBSITE & RESOURCE MATERIALS

The following materials and information are available on the MERC website:

- MERC Homepage
- MERC and Court Decisions Affecting Act 312 and Fact Finding
- MERC Case Decisions
- MERC Decisions Pending before the Michigan Court of Appeals
- MERC Decisions Pending before the Michigan Supreme Court
- MERC Elections Certifications
- MERC Annual Reports
- MERC Forms
- MERC Guide, Rules, Policies and Statutes
- Chart of Recent Significant Legislative Changes Impacting Collective Bargaining
- MERC Panel Members (Act 312 Arbitrators, Fact Finders and Grievance Arbitrators)
- Union Audit Filings
- BER Offices
- “What's New” - provides new and significant information, including recent key rulings by MERC
- Freedom to Work Information with Frequently Asked Questions
- LARA FOIA Requests

Commission Decision Accessibility

At the suggestion of persons on MERC’s Advisory Committee, we have sought diligently to improve the ease with which Commission decisions may be searched. Constituents have the ability to conduct case searches by year and month by clicking on the “1998-present MERC Commission Decisions Issued” link on the “MERC Decisions” page at www.michigan.gov/merc.

Additionally, the search bar is fully operational on the “MERC Decisions” page and utilizes the newest google search technology. Here, constituents are able to type in case numbers, party names, search terms, etc. to locate a specific case(s). Also, if an exact term is queried in “quotes,” in addition to the documents that contain that phrase, a search box populates additional phrases or terms that may correlate with the topic being searched. We trust that this feature will prove very useful for our constituents, especially those who may be unfamiliar with the work performed by MERC/BER.

MERC decisions from 1965-2015 are also available on the Governing Michigan web site, accessed via a link on the “MERC Decisions” webpage, compliments of the Library of Michigan.

MERC/BER CONTACT INFORMATION

Should you need additional information regarding the Commission or Bureau, contact:

<p>Cadillac Place (Detroit) 3026 West Grand Blvd, Ste. 2-750 P.O. Box 02988 Detroit MI 48202-2988 313-456-3510 313-456-3511 (fax)</p>	<p>Ottawa Bldg. (Lansing) 611 W. Ottawa, 4th Floor P.O. Box 30015 Lansing MI 48909 517-373-3580 517-335-9181 (fax)</p>
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