



**House
Legislative
Analysis
Section**

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PUBLIC EMPLOYEES/COLLECTIVE BARGAINING

House Bill 4250 (Substitute H-2)

Sponsor: Rep. William Keith

Committee: Labor

Complete to 5-30-90

***A SUMMARY OF HOUSE BILL 4250
(SUBSTITUTE H-2) AS INTRODUCED 2-21-89***

House Bill 4250 would amend the Public Employment Relations Act to provide for binding fact finding of certain issues in collective bargaining. Under the bill, fact finding proceedings could be initiated by a party to a dispute, or by the Employment Relations Commission, according to the Michigan Administrative Code. The commission would appoint a fact finder if it decided that a hearing on the issues in dispute was warranted, and would notify each of the parties involved. The fact finder would issue and serve a notice of hearing upon each of the parties.

Fact Finding Hearing. A hearing would be public, unless the fact finder, for good cause, limited attendance to the immediate parties to the dispute. Parties could appear in person, by counsel, or by other representative; could call, examine and cross-examine witnesses; and could introduce into the record documentary or other evidence. At the discretion of the fact finder, a party could also introduce stipulations of fact into evidence. An objection to the conduct of a hearing, including, but not limited to, an objection to an introduction of evidence, could be oral or written, accompanied by a short statement of the grounds for the objection, and would be included in the record. A party at whose request a witness was subpoenaed before a fact finder would be required to pay the witness — before he or she testified — the same fees and mileage that were paid to a circuit court witness.

Fact Finder's Duties and Responsibilities. A fact finder would be required to inquire fully into each matter that was necessary to enable him or her to make recommendations concerning each issue in dispute. A fact finder could do all of the following:

- Hold one or more prehearing conferences for settlement or clarification of the issues in dispute.
- Remand the dispute to the parties for further collective bargaining for a period not to exceed ten days.
- Dispose of procedural requests, motions, or similar matters.
- Take official notice of generally recognized facts, and notify each party — either before or during the hearing — of the material that was noticed. Each party would be afforded an opportunity to contest the facts that were noticed.
- Take or cause depositions to be taken
- Grant applications for subpoenas, subpoena witnesses, administer oaths and affirmations, examine witnesses, receive relevant testimony and evidence, rule upon offers of proof, and introduce into the record documentary or other relevant evidence.
- Regulate the course of a hearing, and, if appropriate or necessary, exclude persons or counsel for contemptuous conduct.
- Continue or adjourn a hearing to a later date.

- Order a hearing reopened before issuance of his or her fact finding report.
- Take any other action necessary and authorized by rules of the commission.

Fact Finder's Report. At the close of a fact finding hearing, the fact finder would prepare a statement of the findings of fact and conclusions on material issues and recommendations with respect to each issue in dispute. The fact finder would also present the reasons and basis for the findings of fact, conclusions, and recommendations. The parties, however, could waive this latter requirement. The fact finder's report would be based upon certain factors, as applicable, including the lawful authority of the employer; stipulations of the parties; the interests and welfare of the public and the public employer's ability to meet financial costs; a comparison of the wages, hours, and conditions of employment of the employees involved, as compared with employees performing similar services in public and private employment in comparable communities; the cost of living; the overall compensation currently received by the employees, including all fringe benefits; and changes in any of these circumstances that occurred while the fact finding proceeding was in process, together with other factors normally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact finding, or arbitration. The fact finder's report would be filed with the commission, with copies to each of the parties involved.

Rights of Parties in Fact Finding Hearing. Upon request, a party to a fact finding hearing could have a reasonable period of time at its close for oral argument, which would become part of the record. A party could file a brief with the fact finder, who could establish a reasonable time for the filing and direct the filing of briefs, if warranted by the nature of the proceedings or issues.

Rights of Parties to Fact Finding Report. After receipt of a fact finding report, each party to a dispute would have ten days in which to consider it and to either accept or reject any of the recommendations. If neither party took action, the report would be considered accepted and final and binding upon both parties. If either party rejected any of the fact finder's recommendations, both parties would be required to engage, if necessary, in ten days of intensive collective bargaining, under the supervision of the commission, to resolve voluntarily the issue of disagreement. The fact finder would amend the report to reflect each agreement reached, and each agreement would be final and binding upon both parties. For each issue of disagreement that the parties were not able to resolve during the ten-day bargaining period, the fact finder's recommendation (if supported by competent, material, and substantial evidence on the whole record) would be final and binding.

Penalties. In addition to current sanctions against unfair labor practices, violation of the bill would be considered a

civil infraction, and could result in a fine of up to \$500. Each agreement reached by the parties and each recommendation of the fact finder that became final and binding upon the parties could be enforced, at the instance of either party or of the fact finder, in the circuit court for the county in which the dispute arose, or in which a majority of the affected employees resided. A fact finder's recommendation that became final and binding could be reviewed, at the instance of the fact finder or by either party, in the same circuit court. Disobedience of the court's order of enforcement by either party would be considered contempt of court, punishable by a fine of up to \$250 for each day that the behavior persisted. The fact that a public employer's new fiscal year occurred after the commencement of fact finding proceedings, but before a fact finding report was issued, would not affect the fact finder's authority and would not render a decision moot. Increases in rates of compensation, or other benefits, could be awarded retroactively to the beginning of the period in dispute.

MCL 423.208 et al.