

SENATE BILL No. 886

October 7, 2009, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

A bill to provide for compulsory arbitration of labor disputes between county corrections officers and their employers; to provide for the selection of members of arbitration panels; to prescribe the procedures and authority of arbitration panels; to provide for the enforcement and review of awards of those panels; and to prescribe certain powers and duties of certain state and local officials.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. It is the public policy of this state that it is
2 requisite to the high morale of county corrections officers and the
3 efficient operation of county corrections facilities to afford an
4 alternate, expeditious, effective, and binding procedure for the
5 resolution of disputes, and to that end the provisions of this act,
6 providing for compulsory arbitration, shall be liberally construed.

1 Sec. 2. As used in this act:

2 (a) "County corrections facility" means any county jail or
3 other site used to house or detain individuals in the custody of a
4 county sheriff.

5 (b) "County corrections officer" means an individual employed
6 by or under the supervision of a county sheriff while engaged in
7 the management or control of individuals in the custody of that
8 county sheriff.

9 (c) "Employment relations commission" means the commission
10 created in section 3 of 1939 PA 176, MCL 423.3.

11 Sec. 3. If in the course of mediation of a county corrections
12 officer's dispute, except a grievance dispute concerning the
13 interpretation or application of an existing agreement, the dispute
14 has not been resolved within 30 days of the submission of the
15 dispute to mediation, or within additional periods to which the
16 parties may agree, the employees or the employer may initiate
17 binding arbitration proceedings by a prompt request, in writing, to
18 the other, with a copy to the employment relations commission.

19 Sec. 4. Within 10 days after the written request described in
20 section 3 is made, the employer shall choose a delegate and the
21 employees' designated or selected exclusive collective bargaining
22 representative, or if none, their previously designated
23 representative in the mediation and fact-finding procedures, shall
24 choose a delegate to a panel of arbitration as provided in this
25 act. The employer and the employees shall immediately notify the
26 other and the mediation board of their selections.

27 Sec. 5. (1) Within 7 days after a request from 1 or both

1 parties, the employment relations commission shall select from its
2 panel of arbitrators, as provided in subsection (2), 3 persons as
3 nominees for impartial arbitrator or chairperson of the arbitration
4 panel. Within 5 days after the selection, each party may
5 peremptorily strike the name of 1 of the nominees. Within 7 days
6 after this 5-day period, the employment relations commission shall
7 designate 1 of the remaining nominees as the impartial arbitrator
8 or chairperson of the arbitration panel.

9 (2) The employment relations commission shall provide a panel
10 of arbitrators from the Michigan employment relations commission
11 panel of arbitrators created in section 5 of 1969 PA 312, MCL
12 423.235, to be available to arbitrate labor disputes under this
13 act.

14 Sec. 6. Upon the appointment of the arbitrator, he or she
15 shall proceed to act as chairperson of the panel of arbitration,
16 call a hearing, to begin within 15 days after the appointment, and
17 give reasonable notice of the time and place of the hearing. The
18 chairperson shall preside over the hearing and shall take
19 testimony. Upon application and for good cause shown, and upon
20 terms and conditions that are just, a person, labor organization,
21 or governmental unit having a substantial interest in the
22 arbitration may be granted leave to intervene by the arbitration
23 panel. Any oral or documentary evidence and other data determined
24 relevant by the arbitration panel may be received in evidence. The
25 proceedings shall be informal. Technical rules of evidence shall
26 not apply, and the competency of the evidence is not impaired by a
27 violation of a technical rule of evidence. A verbatim record of the

1 proceedings shall be made, and the arbitrator shall arrange for the
2 necessary recording service. Transcripts may be ordered at the
3 expense of the party ordering them, but the transcripts are not
4 necessary for a decision by the arbitration panel. The expense of
5 the proceedings, including a fee to the chairperson, established in
6 advance by the labor mediation board shall be borne equally by each
7 of the parties to the dispute and the county. The delegates, if
8 public officers or employees, shall continue on the payroll of the
9 public employer at their usual rate of pay. The hearing conducted
10 by the arbitration panel may be adjourned from time to time, but,
11 unless otherwise agreed by the parties, shall be concluded within
12 30 days after the time of its commencement. The majority actions
13 and rulings of the arbitration panel shall constitute the actions
14 and rulings of the arbitration panel.

15 Sec. 7. The arbitration panel may administer oaths, require
16 the attendance of witnesses, and the production of books, papers,
17 contracts, agreements, and documents as the panel determines
18 material to a just determination of the issues in dispute, and for
19 purpose may issue subpoenas. If any person refuses to obey a
20 subpoena, or refuses to be sworn or to testify, or if any witness,
21 party, or attorney is guilty of any contempt while in attendance at
22 any hearing, the arbitration panel may, or the attorney general if
23 requested shall, invoke the aid of any circuit court within the
24 jurisdiction in which the hearing is being held, and the circuit
25 court shall issue an appropriate order. Any failure to obey the
26 order may be punished by the court as contempt.

27 Sec. 8. At any time before the rendering of an award, the

1 chairperson of the arbitration panel, if he or she is of the
2 opinion that it would be useful or beneficial to do so, may remand
3 the dispute to the parties for further collective bargaining for a
4 period not to exceed 3 weeks. If the dispute is remanded for
5 further collective bargaining, the time provisions of this act
6 shall be extended for a time period equal to that of the remand.
7 The chairperson of the panel of arbitration shall notify the
8 employment relations commission of the remand.

9 Sec. 9. At or before the conclusion of the hearing held
10 pursuant to section 6, the arbitration panel shall identify the
11 economic issues in dispute, and direct each of the parties to
12 submit, within the time limit as the panel prescribes, to the
13 arbitration panel and to each other its last offer of settlement on
14 each economic issue. The determination of the arbitration panel as
15 to the issues in dispute and as to which of these issues are
16 economic is conclusive. The arbitration panel, within 30 days after
17 the conclusion of the hearing, or further additional periods to
18 which the parties may agree, shall make written findings of fact
19 and issue a written opinion and order upon the issues presented to
20 it and upon the record made before it, and shall mail or otherwise
21 deliver a true copy of those writings to the parties and their
22 representatives and to the employment relations commission. As to
23 each economic issue, the arbitration panel shall adopt the last
24 offer of settlement which, in the opinion of the arbitration panel,
25 more nearly complies with the applicable factors prescribed in
26 section 10. The findings, opinions, and order as to all other
27 issues shall be based upon the applicable factors prescribed in

1 section 10.

2 Sec. 10. If there is no agreement between the parties, or if
3 there is an agreement but the parties have begun negotiations or
4 discussions for a new agreement or amendment of the existing
5 agreement, and wage rates or other conditions of employment under
6 the proposed new or amended agreement are in dispute, the
7 arbitration panel shall base its findings, opinions, and order upon
8 the following factors, as applicable:

9 (a) The lawful authority of the employer.

10 (b) Stipulations of the parties.

11 (c) The interests and welfare of the public and the financial
12 ability of the county to meet those costs.

13 (d) Comparison of the wages, hours, and conditions of
14 employment of the employees involved in the arbitration proceeding
15 with the wages, hours, and conditions of employment of other
16 employees performing similar services and with other employees
17 generally:

18 (i) In public employment in comparable communities.

19 (ii) In private employment in comparable communities.

20 (e) The average consumer prices for goods and services,
21 commonly known as the cost of living.

22 (f) The overall compensation presently received by the
23 employees, including direct wage compensation, vacations, holidays
24 and other excused time, insurance and pensions, medical and
25 hospitalization benefits, the continuity and stability of
26 employment, and all other benefits received.

27 (g) Changes in any of the circumstances described in

1 subdivisions (a) to (f) during the pendency of the arbitration
2 proceedings.

3 (h) Any other factor, which is normally or traditionally taken
4 into consideration in the determination of wages, hours, and
5 conditions of employment through voluntary collective bargaining,
6 mediation, fact-finding, arbitration, or otherwise between the
7 parties, in the public service or in private employment.

8 Sec. 11. A majority decision of the arbitration panel, if
9 supported by competent, material, and substantial evidence on the
10 whole record, is final and binding upon the parties, and may be
11 enforced, at the instance of either party or of the arbitration
12 panel in the circuit court in the county in which the dispute arose
13 or in which a majority of the affected employees reside. The
14 commencement of a new municipal fiscal year after the initiation of
15 arbitration procedures under this act, but before the arbitration
16 decision, or its enforcement, does not render a dispute moot, or
17 otherwise impair the jurisdiction or authority of the arbitration
18 panel or its decision. Increases in rates of compensation or other
19 benefits may be awarded retroactively to the commencement of any
20 period in dispute, any other statute or charter provisions to the
21 contrary notwithstanding. At any time the parties, by stipulation,
22 may amend or modify an award of arbitration.

23 Sec. 12. If an employee organization recognized under 1947 PA
24 336, MCL 423.201 to 423.217, as the bargaining representative of
25 employees subject to this act, willfully disobeys a lawful order of
26 enforcement by a circuit court pursuant to section 11, or willfully
27 encourages or offers resistance to that order, whether by a strike

1 or otherwise, the punishment for each day that the contempt
2 persists may be a fine fixed in the discretion of the court in an
3 amount not to exceed \$250.00 per day. A public employer who is
4 subject to 1947 PA 336, MCL 423.201 to 423.217, and who willfully
5 disobeys a lawful order of enforcement by the circuit court or
6 willfully encourages or offers resistance to the order is guilty of
7 contempt and may be fined for each day that the contempt persists
8 an amount, fixed at the discretion of the court, not to exceed
9 \$250.00 per day to be assessed against the employer.

10 Sec. 13. (1) Orders of the arbitration panel are reviewable by
11 the circuit court in the county in which the dispute arose or in
12 which a majority of the affected employees reside, but only for the
13 following reasons:

14 (a) The arbitration panel was without or exceeded its
15 jurisdiction.

16 (b) The order is unsupported by competent, material, and
17 substantial evidence on the whole record.

18 (c) The order was procured by fraud, collusion, or other
19 similar and unlawful means.

20 (2) The pendency of the proceeding for review shall not
21 automatically stay the order of the arbitration panel.

22 Sec. 14. During the pendency of proceedings before the
23 arbitration panel, existing wages, hours, and other conditions of
24 employment shall not be changed by action of either party without
25 the consent of the other but a party may consent without prejudice
26 to his or her rights or position under this act.

27 Sec. 15. This act is supplementary to 1947 PA 336, MCL 423.201

1 to 423.217, and does not amend or repeal any of its provisions, but
2 any provisions of that act requiring fact-finding procedures are
3 inapplicable to disputes subject to arbitration under this act.

4 Sec. 16. A person shall not be sentenced to a term of
5 imprisonment for any violation of this act or an order of the
6 arbitration panel.