

HOUSE BILL No. 4522

April 12, 2011, Introduced by Rep. Farrington and referred to the Committee on Government Operations.

A bill to amend 1969 PA 312, entitled

"An act to provide for compulsory arbitration of labor disputes in municipal police and fire departments; to define such public departments; to provide for the selection of members of arbitration panels; to prescribe the procedures and authority thereof; and to provide for the enforcement and review of awards thereof,"

by amending sections 2, 3, 5, 6, 8, 9, and 10 (MCL 423.232, 423.233, 423.235, 423.236, 423.238, 423.239, and 423.240).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Public police and fire ~~departments~~ **DEPARTMENT**
2 **EMPLOYEE** means any **OF THE FOLLOWING:**

3 **(A) AN EMPLOYEE OF A** department of a city, county, village, or
4 township, ~~having employees~~ **DISTRICT, BOARD, OR ANY OTHER ENTITY**
5 **CREATED IN WHOLE OR IN PART BY THE AUTHORIZATION OF 1 OR MORE OF**

1 THOSE GOVERNING BODIES, WHETHER CREATED BY STATUTE, ORDINANCE,
2 CONTRACT, RESOLUTION, DELEGATION, OR ANY OTHER MECHANISM, WHO IS
3 engaged as ~~policemen~~, **A POLICE OFFICER** or in fire fighting or
4 subject to the hazards thereof. ~~, emergency~~

5 (B) **EMERGENCY** medical service personnel employed by a **PUBLIC**
6 police or fire department. ~~, or an~~

7 (C) **AN** emergency telephone operator, **BUT ONLY IF DIRECTLY**
8 employed by a **PUBLIC** police or fire department.

9 (2) Emergency medical service personnel for purposes of this
10 act includes ~~a person~~ **AN INDIVIDUAL** who provides assistance at
11 dispatched or observed medical emergencies occurring outside a
12 recognized medical facility including instances of heart attack,
13 stroke, injury accidents, electrical accidents, drug overdoses,
14 imminent childbirth, and other instances where there is the
15 possibility of death or further injury; initiates stabilizing
16 treatment or transportation of injured from the emergency site; and
17 notifies police or interested departments of certain situations
18 encountered including criminal matters, poisonings, and the report
19 of contagious diseases. Emergency telephone operator for the
20 purpose of this act includes ~~a person~~ **AN INDIVIDUAL** employed
21 **DIRECTLY** by a police or fire department for the purpose of relaying
22 emergency calls to police, fire, or emergency medical service
23 personnel.

24 (3) This act ~~shall~~ **DOES** not apply to ~~persons~~ **INDIVIDUALS**
25 employed by a private emergency medical service company who work
26 under a contract with a governmental unit or personnel working in
27 an emergency service organization whose duties are solely of an

1 administrative or supporting nature and who are not otherwise
2 qualified under subsection (2).

3 Sec. 3. (1) Whenever in the course of mediation of a public
4 police or fire department employee's dispute, except a dispute
5 concerning the interpretation or application of an existing
6 agreement (a "grievance" dispute), the dispute has not been
7 resolved to the agreement of both parties within 30 days of the
8 submission of the dispute to mediation, or within ~~such~~ **ANY** further
9 additional periods to which the parties ~~may~~ agree, the employees or
10 employer may initiate binding arbitration proceedings by prompt
11 request, ~~therefor~~, in writing, to the other, with copy to **THE**
12 **MEDIATOR AND** the employment relations commission.

13 (2) **UPON RECEIPT OF A WRITTEN REQUEST FOR BINDING ARBITRATION,**
14 **THE MEDIATOR SHALL, IN CONSULTATION WITH THE PARTIES, CREATE AND**
15 **TRANSMIT TO BOTH PARTIES A LIST OF EACH OF THE ISSUES IN DISPUTE.**
16 **WITHIN 30 DAYS AFTER RECEIPT OF THE WRITTEN REQUEST, THE PARTIES**
17 **SHALL MEET WITH THE MEDIATOR TO PRESENT IN WRITING AND EXPLAIN**
18 **PROPOSED CONTRACT LANGUAGE TO RESOLVE EACH ISSUE, INCLUDING ANY**
19 **ISSUES PREVIOUSLY DISCUSSED BY THE PARTIES BUT OMITTED FROM THE**
20 **MEDIATOR'S LIST, AND TO ENGAGE IN ANY FURTHER DISCUSSION OR**
21 **NEGOTIATION AS THE PARTIES AGREE. EXCEPT IN CASES IN WHICH THE**
22 **PARTIES AGREE TO A LONGER PERIOD BECAUSE OF CONTINUING**
23 **NEGOTIATIONS, THE MEDIATOR SHALL TRANSMIT THE FINAL LIST OF ISSUES**
24 **IN DISPUTE AND BOTH PARTIES' PROPOSED CONTRACT LANGUAGE TO THE**
25 **EMPLOYMENT RELATIONS COMMISSION FOR HEARING NO MORE THAN 14 DAYS**
26 **AFTER RECEIVING THE WRITTEN PROPOSED CONTRACT LANGUAGE. THE PARTIES**
27 **RETAIN THE RIGHT TO MEET AND NEGOTIATE, WITH OR WITHOUT THE**

1 MEDIATOR, TO ATTEMPT TO RESOLVE SOME OR ALL OF THE DISPUTED ISSUES
2 AT ANY TIME BEFORE THE ARBITRATION PANEL ISSUES AN AWARD PURSUANT
3 TO THIS ACT.

4 Sec. 5. (1) Within 7 days of a ~~request from 1 or both parties~~
5 RECEIVING A LIST OF ISSUES IN DISPUTE AND PROPOSED CONTRACT
6 LANGUAGE FROM THE MEDIATOR PURSUANT TO SECTION 3, the employment
7 relations commission shall select from its panel of arbitrators, as
8 provided in subsection (2), 3 ~~persons as~~ nominees for impartial
9 arbitrator or ~~chairman~~ **CHAIR** of the arbitration panel. Within 5
10 days after the selection each party may peremptorily strike the
11 name of 1 of the nominees. Within 7 days after this 5-day period,
12 the commission shall designate 1 of the remaining nominees as the
13 impartial arbitrator or ~~chairman~~ **CHAIR** of the arbitration panel.

14 (2) The employment relations commission shall establish and
15 appoint a panel of arbitrators, who shall be known as the Michigan
16 employment relations commission panel of arbitrators. The
17 commission shall appoint members for indefinite terms. Members
18 shall be impartial, competent, and reputable citizens of the United
19 States and residents of the state, and shall qualify by taking and
20 subscribing the constitutional oath or affirmation of office. The
21 commission may at any time appoint additional members to the panel
22 of arbitrators, and may remove existing members without cause.

23 Sec. 6. Upon the appointment of the arbitrator, he **OR SHE**
24 shall ~~proceed to act as chairman~~ **CHAIR** of the panel of arbitration,
25 call a hearing, to begin within 15 days, and give reasonable notice
26 of the time and place of the hearing. The ~~chairman~~ **CHAIR** shall
27 preside over the hearing and shall take testimony. Upon application

1 and for good cause shown, and upon ~~such~~ terms and conditions as
2 **THAT** are just, a person, labor organization, or governmental unit
3 having a substantial interest therein ~~therein~~ **IN THE MATTER** may be granted
4 leave to intervene by the arbitration panel. Any oral or
5 documentary evidence and other data ~~deemed relevant by the~~
6 arbitration panel **CONSIDERS RELEVANT** may be received in evidence.
7 The proceedings ~~shall be~~ **ARE** informal. Technical rules of evidence
8 ~~shall~~ **DO** not apply and **DO NOT IMPAIR** the competency of the
9 evidence. ~~shall not thereby be deemed impaired.~~ A verbatim record
10 of the proceedings shall be made, and the arbitrator shall arrange
11 for the necessary recording service. Transcripts may be ordered at
12 the expense of the party ordering them, but the transcripts ~~shall~~
13 **ARE** not ~~be~~ necessary for a decision by the arbitration panel. The
14 expense of the proceedings, including a fee to the ~~chairman~~ **CHAIR**,
15 established in advance by the labor mediation board shall be borne
16 equally by each of the parties to the dispute. ~~and the state.~~ The
17 delegates, if public officers or employees, shall continue on the
18 payroll of the public employer at their usual rate of pay. The
19 hearing conducted by the arbitration panel may be adjourned from
20 time to time, but ~~, unless otherwise agreed by the parties,~~ shall
21 be concluded within 30 days of the time of its commencement. ~~Its~~ **IF**
22 **THE PARTIES AGREE, THE CHAIR MAY EXTEND THE TIME FOR THE CONCLUSION**
23 **OF THE HEARING TO NO MORE THAN 120 DAYS FROM THE TIME THE HEARING**
24 **COMMENCES. THE ARBITRATION PANEL SHALL NOT WAIVE THE 120-DAY LIMIT.**
25 **THE ARBITRATION PANEL'S** majority actions and rulings shall
26 constitute the actions and rulings of the arbitration panel.

27 Sec. 8. **AT A HEARING HELD PURSUANT TO SECTION 6, THE**

1 ARBITRATOR SHALL ADDRESS THE MERITS OF ONLY THOSE ISSUES IDENTIFIED
2 BY THE MEDIATOR AND SUBMITTED TO THE EMPLOYMENT RELATIONS
3 COMMISSION UNDER SECTION 3. At or before the conclusion of the
4 hearing, ~~held pursuant to section 6,~~ the arbitration panel shall
5 identify the economic issues in dispute, and direct each of the
6 parties to submit, within ~~such a~~ time limit as ~~the panel shall~~
7 ~~prescribe~~ **THE CHAIR PRESCRIBES**, to the arbitration panel **CHAIR** and
8 to each other its last offer of settlement on each economic issue.
9 The determination of the arbitration panel ~~as to the issues in~~
10 ~~dispute and as to which of these~~ **THE** issues are economic ~~shall be~~
11 **IS** conclusive. ~~The arbitration panel, within 30 days after the~~
12 ~~conclusion of the hearing, or such further additional periods to~~
13 ~~which the parties may agree,~~ **WITHIN 30 DAYS OF THE CONCLUSION OF**
14 **THE HEARING, OR IF THE PARTIES AGREE TO AN EXTENSION, WITHIN 90**
15 **DAYS OF THE CONCLUSION OF THE HEARING, THE ARBITRATION PANEL** shall
16 make written findings of fact and promulgate a written opinion and
17 order upon the issues presented to it and upon the record made
18 before it, and shall mail or otherwise deliver a true copy thereof
19 **OF THE OPINION** to the parties and their representatives and to the
20 employment relations commission. As to each economic issue, the
21 arbitration panel shall adopt the last offer of settlement ~~which~~
22 **THAT**, in the opinion of the arbitration panel, more nearly complies
23 with the applicable factors prescribed in section 9. The findings,
24 opinions, and order as to all other issues shall be based upon the
25 applicable factors prescribed in section 9. ~~This section as amended~~
26 ~~shall be applicable only to arbitration proceedings initiated under~~
27 ~~section 3 on or after January 1, 1973.~~

1 Sec. 9. (1) ~~Where there is no agreement between the parties,~~
2 ~~or where there is an agreement but the parties~~ **IF THE PARTIES DO**
3 **NOT HAVE AN AGREEMENT OR** have begun negotiations or discussions
4 looking to a new agreement or amendment of the existing agreement,
5 and wage rates or other conditions of employment under the proposed
6 new or amended agreement are in dispute, the arbitration panel
7 shall base its findings, opinions, and order upon the following
8 factors, as applicable:

9 **(A) THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL**
10 **ABILITY OF THE UNIT OF GOVERNMENT TO PAY. IN DETERMINING THE**
11 **ABILITY OF THE UNIT OF GOVERNMENT TO PAY, THE ARBITRATION PANEL**
12 **SHALL NOT CONSIDER UNUSED MILLAGE OR ASSESSMENT CAPACITY BUT SHALL**
13 **CONSIDER ALL OF THE FOLLOWING:**

14 **(i) THE FINANCIAL IMPACT ON THE COMMUNITY OF ANY AWARD MADE BY**
15 **THE ARBITRATION PANEL OVER A MINIMUM OF 5 YEARS FROM THE DATE OF**
16 **THE AWARD.**

17 **(ii) ALL LIABILITIES, WHETHER OR NOT THEY APPEAR ON THE BALANCE**
18 **SHEET OF THE UNIT OF GOVERNMENT.**

19 **(B)** ~~(a)~~ The lawful authority of the employer.

20 **(C)** ~~(b)~~ Stipulations of the parties.

21 ~~—— (c) The interests and welfare of the public and the financial~~
22 ~~ability of the unit of government to meet those costs.~~

23 **(d)** Comparison of the wages, hours, and conditions of
24 employment of the employees involved in the arbitration proceeding
25 with the wages, hours, and conditions of employment of other
26 employees performing similar services and with other employees
27 generally **IN BOTH OF THE FOLLOWING:**

(i) ~~In public~~ **PUBLIC** employment in comparable communities.

(ii) ~~In private~~ **PRIVATE** employment in comparable communities.

(E) THE PAY AND BENEFITS OF OTHER EMPLOYEES OF THE UNIT OF GOVERNMENT OUTSIDE OF THE BARGAINING UNIT IN QUESTION.

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

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

(H) ~~(g)~~ Changes in any of the foregoing circumstances ~~during the pendency of~~ **WHILE** the arbitration proceedings **ARE PENDING**.

(I) ~~(h) Such other factors, not confined to the foregoing, which~~ **OTHER FACTORS THAT** are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service, or in private employment.

(2) THE ARBITRATION PANEL SHALL AFFORD WEIGHT TO THE FACTORS LISTED IN SUBSECTION (1), AS FOLLOWS:

(A) A DETERMINATION THAT THE UNIT OF GOVERNMENT DOES NOT HAVE THE FINANCIAL ABILITY TO PAY SHALL BE A FUNDAMENTAL CONCERN.

(B) THE INTERNAL COMPARABLE PAY AND BENEFITS UNDER SUBSECTION (1)(E) SHALL BE GIVEN MORE SIGNIFICANCE THAN THAT OF THE EXTERNAL COMPARABLES UNDER SUBSECTION (1)(D).

(3) AN ARBITRATION AWARD SHALL NOT REQUIRE AN INCREASE IN THE

1 TOTAL ECONOMIC COST TO THE LOCAL UNIT OF GOVERNMENT THAT EXCEEDS
 2 THE LESSER OF THE TOTAL PERCENTAGE INCREASE IN THE LOCAL UNIT OF
 3 GOVERNMENT'S GENERAL FUND REVENUE, EXCLUDING REAPPROPRIATION OF
 4 FUND EQUITY, OR THE INCREASE IN THE PERCENTAGE CHANGE IN THE
 5 CONSUMER PRICE INDEX, OVER THE CONTRACT PERIOD. AS USED IN THIS
 6 SUBSECTION, "CONSUMER PRICE INDEX" MEANS THE MOST COMPREHENSIVE
 7 INDEX OF CONSUMER PRICES AVAILABLE FOR THIS STATE FROM THE BUREAU
 8 OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.

9 Sec. 10. A majority decision of the arbitration panel, if
 10 supported by competent, material, and substantial evidence on the
 11 whole record, shall be final and binding upon the parties, and may
 12 be enforced, at the instance of either party or of the arbitration
 13 panel in the circuit court for the county in which the dispute
 14 arose or in which a majority of the affected employees reside. The
 15 commencement of a new municipal fiscal year after the initiation of
 16 arbitration procedures under this act, but before the arbitration
 17 decision, or its enforcement, ~~shall not be deemed to~~ **DOES NOT**
 18 render a dispute moot ~~, or to otherwise~~ impair the jurisdiction or
 19 authority of the arbitration panel or its decision. ~~Increases~~ **NOT**
 20 **WITHSTANDING ANY OTHER STATUTE OR CHARTER PROVISIONS TO THE**
 21 **CONTRARY, INCREASES** in rates of compensation or other benefits may
 22 be awarded retroactively to the commencement of any ~~period(s)~~
 23 **PERIOD OR PERIODS** in dispute. ~~, any other statute or charter~~
 24 ~~provisions to the contrary notwithstanding.~~ At any time the
 25 parties, by stipulation, may amend or modify an award of
 26 arbitration.