

Act No. 116
Public Acts of 2011
Approved by the Governor
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Rep. Farrington

ENROLLED HOUSE BILL No. 4522

AN ACT 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, 5, 6, 8, and 9 (MCL 423.232, 423.235, 423.236, 423.238, and 423.239).

The People of the State of Michigan enact:

Sec. 2. (1) As used in this act, "public police or fire department employee" means any employee of a city, county, village, or township, or of any authority, district, board, or any other entity created in whole or in part by the authorization of 1 or more cities, counties, villages, or townships, whether created by statute, ordinance, contract, resolution, delegation, or any other mechanism, who is engaged as a police officer, or in fire fighting or subject to the hazards thereof; emergency medical service personnel employed by a public police or fire department; or an emergency telephone operator, but only if directly employed by a public police or fire department. Public police and fire department employee does not include any of the following:

- (a) An employee of a community college.
- (b) An employee of a metropolitan district created under 1939 PA 147, MCL 119.51 to 119.62.
- (c) An emergency telephone operator employed by a 911 authority or consolidated dispatch center.

(d) An employee of an authority that is in existence on June 1, 2011, unless the employee is represented by a bargaining representative on that date or a contract in effect on that date specifically provides the employee with coverage under this act. An exclusion under this subdivision terminates if the authority composition changes to include an additional governmental unit or portion of a governmental unit. This subdivision does not apply to terminate an exclusion created under subdivisions (a) to (c).

(2) "Emergency medical service personnel" for purposes of this act includes a person who provides assistance at dispatched or observed medical emergencies occurring outside a recognized medical facility including instances of heart attack, stroke, injury accidents, electrical accidents, drug overdoses, imminent childbirth, and other instances where there is the possibility of death or further injury; initiates stabilizing treatment or transportation of injured from the emergency site; and notifies police or interested departments of certain situations encountered including criminal matters, poisonings, and the report of contagious diseases. "Emergency telephone operator" for the purpose of this act includes a person employed by a police or fire department for the purpose of relaying emergency calls to police, fire, or emergency medical service personnel.

(3) This act does not apply to persons employed by a private emergency medical service company who work under a contract with a governmental unit or personnel working in an emergency service organization whose duties are solely of an administrative or supporting nature and who are not otherwise qualified under subsection (2).

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

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

(3) The employment relations commission shall establish the qualifications and training that are necessary for an individual to serve as the chair of an arbitration panel under this act. The commission may waive the qualifications and training requirements for an individual who has served as a commission-appointed chair of an arbitration panel in an arbitration proceeding under this act before the effective date of the amendatory act that added this subsection.

Sec. 6. The arbitrator shall act as chair of the panel of arbitration, call and begin a hearing within 15 days after appointment, and give reasonable notice of the time and place of the hearing. The chair shall preside over the hearing and shall take testimony. Upon application and for good cause shown, and upon terms and conditions that are just, the arbitration panel may grant leave to intervene to a person, labor organization, or governmental unit having a substantial interest in the matter. The arbitration panel may receive into evidence any oral or documentary evidence and other data it considers relevant. The proceedings shall be informal. Technical rules of evidence do not apply and do not impair the competency of the evidence. A verbatim record of the proceedings shall be made, and the arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them but the transcripts are not necessary for a decision by the arbitration panel. The expense of the proceedings, including a fee to the chair, established in advance by the Michigan employment relations commission shall be borne equally by each of the parties to the dispute. The delegates, if public officers or employees, shall continue on the payroll of the public employer at their usual rate of pay. The hearing conducted by the arbitration panel may be adjourned from time to time, but shall be concluded and any posthearing briefs filed within 180 days after it commences. Its majority actions and rulings shall constitute the actions and rulings of the arbitration panel.

Sec. 8. The arbitration panel shall identify the economic issues in dispute and direct each of the parties to submit to the arbitration panel and to each other its last offer of settlement on each economic issue before the beginning of the hearing. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic is conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or within up to 60 additional days at the discretion of the chair, shall make written findings of fact and promulgate a written opinion and order. As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.

Sec. 9. (1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

(i) The financial impact on the community of any award made by the arbitration panel.

(ii) The interests and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

- (i) Public employment in comparable communities.
- (ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

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

(g) 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) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) 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 give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor