

SUBSTITUTE FOR
HOUSE BILL NO. 4522

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, 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:

1 Sec. 2. (1) ~~Public~~ **AS USED IN THIS ACT, "PUBLIC** police and ~~OR~~
2 fire departments **DEPARTMENT EMPLOYEE"** means any department ~~EMPLOYEE~~
3 of a city, county, village, or township, ~~having employees~~ **OR OF ANY**
4 **AUTHORITY, DISTRICT, BOARD, OR ANY OTHER ENTITY CREATED IN WHOLE OR**
5 **IN PART BY THE AUTHORIZATION OF 1 OR MORE CITIES, COUNTIES,**
6 **VILLAGES, OR TOWNSHIPS, WHETHER CREATED BY STATUTE, ORDINANCE,**
7 **CONTRACT, RESOLUTION, DELEGATION, OR ANY OTHER MECHANISM, WHO IS**

House Bill No. 4522 as amended June 28, 2011

engaged as ~~police~~**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).>>

(i) THE EMPLOYEE IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT, AS OF JUNE 1, 2011.

(ii) THE EMPLOYEE'S COLLECTIVE BARGAINING AGREEMENT SPECIFICALLY INCLUDES A PROVISION PROVIDING FOR COVERAGE UNDER THIS ACT AS OF JUNE 1, 2011.

(iii) THE AUTHORITY COMPOSITION CHANGES AFTER JUNE 1, 2011 TO INCLUDE AN ADDITIONAL GOVERNMENTAL UNIT OR AN ADDITIONAL PORTION OF A GOVERNMENTAL UNIT.

(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

1 death or further injury; initiates stabilizing treatment or
2 transportation of injured from the emergency site; and notifies
3 police or interested departments of certain situations encountered
4 including criminal matters, poisonings, and the report of
5 contagious diseases. "Emergency telephone operator" for the purpose
6 of this act includes a person employed by a police or fire
7 department for the purpose of relaying emergency calls to police,
8 fire, or emergency medical service personnel.

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

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

24 (2) The employment relations commission shall establish and
25 appoint a panel of arbitrators, who shall be known as the Michigan
26 employment relations commission panel of arbitrators. The
27 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. ~~Upon the appointment of the arbitrator, he shall proceed to~~ **THE ARBITRATOR SHALL** act as ~~chairman~~ **CHAIR** of the panel of arbitration, call **AND BEGIN** a hearing ~~, to begin~~ within 15 days **AFTER APPOINTMENT**, and give reasonable notice of the time and place of the hearing. The ~~chairman~~ **CHAIR** shall preside over the hearing and shall take testimony. Upon application and for good cause shown, and upon ~~such~~ terms and conditions ~~as~~ **THAT** are just, **THE ARBITRATION PANEL MAY GRANT LEAVE TO INTERVENE TO** a person, labor organization, or governmental unit having a substantial interest ~~therein may be granted leave to intervene by the arbitration panel.~~ **IN THE MATTER. THE ARBITRATION PANEL MAY RECEIVE INTO EVIDENCE ANY** oral or documentary evidence and other data ~~deemed relevant by the arbitration panel may be received in evidence.~~ **IT CONSIDERS RELEVANT.** The proceedings shall be informal. Technical rules of

1 evidence ~~shall~~ **DO** not apply and **DO NOT IMPAIR** the competency of the
 2 evidence. ~~shall not thereby be deemed impaired.~~ A verbatim record
 3 of the proceedings shall be made, and the arbitrator shall arrange
 4 for the necessary recording service. Transcripts may be ordered at
 5 the expense of the party ordering them but the transcripts ~~shall~~
 6 **ARE** not ~~be~~ necessary for a decision by the arbitration panel. The
 7 expense of the proceedings, including a fee to the ~~chairman,~~ **CHAIR,**
 8 established in advance by the ~~labor mediation board~~ **MICHIGAN**
 9 **EMPLOYMENT RELATIONS COMMISSION** shall be borne equally by each of
 10 the parties to the dispute. ~~and the state.~~ The delegates, if public
 11 officers or employees, shall continue on the payroll of the public
 12 employer at their usual rate of pay. The hearing conducted by the
 13 arbitration panel may be adjourned from time to time, but ~~, unless~~
 14 ~~otherwise agreed by the parties,~~ shall be concluded within 30 **AND**
 15 **ANY POSTHEARING BRIEFS FILED WITHIN 180** days ~~of the time of its~~
 16 ~~commencement.~~ **AFTER IT COMMENCES.** Its majority actions and rulings
 17 shall constitute the actions and rulings of the arbitration panel.

18 Sec. 8. ~~At or before the conclusion of the hearing held~~
 19 ~~pursuant to section 6, the~~ **THE** arbitration panel shall identify the
 20 economic issues in dispute ~~, and~~ direct each of the parties to
 21 submit ~~, within such time limit as the panel shall prescribe,~~ to
 22 the arbitration panel and to each other its last offer of
 23 settlement on each economic issue **BEFORE THE BEGINNING OF THE**
 24 **HEARING.** The determination of the arbitration panel as to the
 25 issues in dispute and as to which of these issues are economic
 26 ~~shall be~~ **IS** conclusive. The arbitration panel, within 30 days after
 27 the conclusion of the hearing, or ~~such further additional periods~~

~~to which the parties may agree, 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. upon the issues~~
~~presented to it and upon the record made before it, and shall mail~~
~~or otherwise deliver a true copy thereof to the parties and their~~
~~representatives and to the employment relations commission. 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.
~~This section as amended shall be applicable only to arbitration~~
~~proceedings initiated under section 3 on or after January 1, 1973.~~

Sec. 9. (1) ~~Where there is no agreement between the parties,~~
~~or where there is an agreement but~~ **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: ~~as~~
~~applicable.~~

(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.

1 (ii) THE INTERESTS AND WELFARE OF THE PUBLIC.

2 (iii) ALL LIABILITIES, WHETHER OR NOT THEY APPEAR ON THE BALANCE
3 SHEET OF THE UNIT OF GOVERNMENT.

4 (iv) ANY LAW OF THIS STATE OR ANY DIRECTIVE ISSUED UNDER THE
5 LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT,
6 2011 PA 4, MCL 141.1501 TO 141.1531, THAT PLACES LIMITATIONS ON A
7 UNIT OF GOVERNMENT'S EXPENDITURES OR REVENUE COLLECTION.

8 (B) ~~(a)~~—The lawful authority of the employer.

9 (C) ~~(b)~~—Stipulations of the parties.

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

12 (d) Comparison of the wages, hours, and conditions of
13 employment of the employees involved in the arbitration proceeding
14 with the wages, hours, and conditions of employment of other
15 employees performing similar services and with other employees
16 generally **IN BOTH OF THE FOLLOWING:**

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

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

19 (E) **COMPARISON OF THE WAGES, HOURS, AND CONDITIONS OF**
20 **EMPLOYMENT OF OTHER EMPLOYEES OF THE UNIT OF GOVERNMENT OUTSIDE OF**
21 **THE BARGAINING UNIT IN QUESTION.**

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

24 (G) ~~(f)~~—The overall compensation presently received by the
25 employees, including direct wage compensation, vacations, holidays,
26 and other excused time, insurance and pensions, medical and
27 hospitalization benefits, the continuity and stability of

1 employment, and all other benefits received.

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

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

10 (2) **THE ARBITRATION PANEL SHALL GIVE THE FINANCIAL ABILITY OF**
11 **THE UNIT OF GOVERNMENT TO PAY THE MOST SIGNIFICANCE, IF THE**
12 **DETERMINATION IS SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL**
13 **EVIDENCE.**