

# SENATE BILL No. 397

May 24, 2011, Introduced by Senators JONES, NOFS and RICHARDVILLE 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~~ **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,**

1 VILLAGES, OR TOWNSHIPS, 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 medical service  
5 personnel employed by a PUBLIC police or fire department; ~~—~~or an  
6 emergency telephone operator, BUT ONLY IF DIRECTLY employed by a  
7 PUBLIC police or fire department. PUBLIC POLICE AND FIRE DEPARTMENT  
8 EMPLOYEE DOES NOT INCLUDE ANY OF THE FOLLOWING:

9 (A) AN EMPLOYEE OF A COMMUNITY COLLEGE.

10 (B) AN EMPLOYEE OF A METROPOLITAN DISTRICT CREATED UNDER 1939  
11 PA 147, MCL 119.51 TO 119.62.

12 (C) AN EMERGENCY TELEPHONE OPERATOR EMPLOYED BY A 911  
13 AUTHORITY OR CONSOLIDATED DISPATCH CENTER.

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

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

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

17           (2) **UPON RECEIPT OF A WRITTEN REQUEST FOR BINDING ARBITRATION,**  
18 **THE MEDIATOR SHALL, IN CONSULTATION WITH THE PARTIES, CREATE AND**  
19 **TRANSMIT TO BOTH PARTIES A LIST OF EACH OF THE ISSUES IN DISPUTE.**  
20 **WITHIN 30 DAYS AFTER RECEIPT OF THE WRITTEN REQUEST, THE PARTIES**  
21 **SHALL MEET WITH THE MEDIATOR TO PRESENT IN WRITING AND EXPLAIN**  
22 **PROPOSED CONTRACT LANGUAGE TO RESOLVE EACH ISSUE, INCLUDING ANY**  
23 **ISSUES PREVIOUSLY DISCUSSED BY THE PARTIES BUT OMITTED FROM THE**  
24 **MEDIATOR'S LIST, AND TO ENGAGE IN ANY FURTHER DISCUSSION OR**  
25 **NEGOTIATION AS THE PARTIES AGREE. EXCEPT IN CASES IN WHICH THE**  
26 **PARTIES AGREE TO A LONGER PERIOD BECAUSE OF CONTINUING**  
27 **NEGOTIATIONS, THE MEDIATOR SHALL TRANSMIT THE FINAL LIST OF ISSUES**

1 IN DISPUTE AND BOTH PARTIES' PROPOSED CONTRACT LANGUAGE TO THE  
2 EMPLOYMENT RELATIONS COMMISSION FOR HEARING NOT MORE THAN 14 DAYS  
3 AFTER RECEIVING THE WRITTEN PROPOSED CONTRACT LANGUAGE. THE PARTIES  
4 RETAIN THE RIGHT TO MEET AND NEGOTIATE, WITH OR WITHOUT THE  
5 MEDIATOR, TO ATTEMPT TO RESOLVE SOME OR ALL OF THE DISPUTED ISSUES  
6 AT ANY TIME BEFORE THE ARBITRATION PANEL ISSUES AN AWARD PURSUANT  
7 TO THIS ACT.

8 Sec. 5. (1) Within 7 days of a ~~request from 1 or both parties~~  
9 RECEIVING A LIST OF ISSUES IN DISPUTE AND PROPOSED CONTRACT  
10 LANGUAGE FROM THE MEDIATOR PURSUANT TO SECTION 3, the employment  
11 relations commission shall select from its panel of arbitrators, as  
12 provided in subsection (2), 3 persons as nominees for impartial  
13 arbitrator or chairman of the arbitration panel. Within 5 days  
14 after the selection each party may peremptorily strike the name of  
15 1 of the nominees. Within 7 days after this 5-day period, the  
16 commission shall designate 1 of the remaining nominees as the  
17 impartial arbitrator or ~~chairman~~ CHAIR of the arbitration panel.

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

27 (3) THE EMPLOYMENT RELATIONS COMMISSION SHALL ESTABLISH THE

1 QUALIFICATIONS AND TRAINING THAT ARE NECESSARY FOR AN INDIVIDUAL TO  
2 SERVE AS THE CHAIR OF AN ARBITRATION PANEL UNDER THIS ACT. THE  
3 COMMISSION MAY WAIVE THE QUALIFICATIONS AND TRAINING REQUIREMENTS  
4 FOR AN INDIVIDUAL WHO HAS SERVED AS A COMMISSION-APPOINTED CHAIR OF  
5 AN ARBITRATION PANEL IN AN ARBITRATION PROCEEDING UNDER THIS ACT  
6 BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
7 SUBSECTION.

8       Sec. 6. Upon the appointment of the arbitrator **UNDER SECTION**  
9 5, he **OR SHE** shall ~~proceed to act as chairman~~**CHAIR** of the panel of  
10 arbitration, call a hearing, to begin within 15 days, and give  
11 reasonable notice of the time and place of the hearing. The  
12 ~~chairman~~**CHAIR** shall preside over the hearing and shall take  
13 testimony. Upon application and for good cause shown, and upon ~~such~~  
14 terms and conditions ~~as~~**THAT** are just, a person, labor  
15 organization, or governmental unit having a substantial interest  
16 ~~therein~~**IN THE MATTER** may be granted leave to intervene by the  
17 arbitration panel. Any oral or documentary evidence and other data  
18 ~~deemed relevant by the arbitration panel~~ **CONSIDERS RELEVANT** may be  
19 received in evidence. The proceedings shall be informal. Technical  
20 rules of evidence ~~shall~~**DO** not apply and **DO NOT IMPAIR** the  
21 competency of the evidence. ~~shall not thereby be deemed impaired.~~  
22 verbatim record of the proceedings shall be made, and the  
23 ~~arbitrator~~**CHAIR** shall arrange for the necessary recording service.  
24 Transcripts may be ordered at the expense of the party ordering  
25 them, but ~~the transcripts shall~~**ARE** not be necessary for a decision  
26 by the arbitration panel. The expense of the proceedings, including  
27 a fee to the ~~chairman~~**CHAIR**, established in advance by the labor

1 mediation board shall be borne equally by each of the parties to  
2 the dispute. ~~and the state.~~ The delegates, if public officers or  
3 employees, shall continue on the payroll of the public employer at  
4 their usual rate of pay. The hearing conducted by the arbitration  
5 panel may be adjourned from time to time, but ~~, unless otherwise~~  
6 ~~agreed by the parties,~~ shall be concluded within 30 days of the  
7 time of its commencement. ~~Its~~ **IF THE PARTIES AGREE, THE CHAIR MAY**  
8 **EXTEND THE TIME FOR CONCLUDING THE HEARING TO NO MORE THAN 180 DAYS**  
9 **FROM THE TIME THE HEARING COMMENCES. THE ARBITRATION PANEL'S**  
10 majority actions and rulings shall constitute the actions and  
11 rulings of the arbitration panel.

12       Sec. 8. **AT A HEARING HELD PURSUANT TO SECTION 6, THE**  
13 **ARBITRATOR SHALL ADDRESS THE MERITS OF ONLY THE ISSUES IDENTIFIED**  
14 **BY THE MEDIATOR AND SUBMITTED TO THE EMPLOYMENT RELATIONS**  
15 **COMMISSION PURSUANT TO SECTION 3.** At or before the conclusion of  
16 the hearing, ~~held pursuant to section 6,~~ the arbitration panel  
17 shall identify the economic issues in dispute ~~, and~~ direct each of  
18 the parties to submit, within ~~such~~ **A** time limit ~~as the panel shall~~  
19 ~~prescribe~~ **THE CHAIR PRESCRIBES**, to the ~~arbitration panel~~ **CHAIR** and  
20 to each other its last offer of settlement on each economic issue.  
21 The determination of the arbitration panel ~~as to the issues in~~  
22 ~~dispute and~~ as to which of ~~these~~ **THE** issues are economic shall be  
23 **IS** conclusive. ~~The arbitration panel, within 30 days after the~~  
24 ~~conclusion of the hearing, or such further additional periods to~~  
25 ~~which the parties may agree,~~ **WITHIN 30 DAYS AFTER THE CONCLUSION OF**  
26 **THE HEARING, OR IF THE PARTIES AGREE TO AN EXTENSION, WITHIN 90**  
27 **DAYS AFTER THE CONCLUSION OF THE HEARING, THE ARBITRATION PANEL**

1 shall make written findings of fact and promulgate **INCORPORATED IN**  
 2 a written opinion and order upon the issues presented to it and  
 3 upon the record made before it, and shall mail or otherwise deliver  
 4 a true copy thereof **OF THE OPINION** to the parties and their  
 5 representatives and to the employment relations commission. As to  
 6 each economic issue, the arbitration panel shall adopt the last  
 7 offer of settlement ~~which~~ **THAT**, in the opinion of the arbitration  
 8 panel, more nearly complies with the applicable factors prescribed  
 9 in section 9. The findings, opinions, and order as to all other  
 10 issues shall be based upon the applicable factors prescribed in  
 11 section 9. ~~This section as amended shall be applicable only to~~  
 12 ~~arbitration proceedings initiated under section 3 on or after~~  
 13 ~~January 1, 1973.~~

14 ~~Sec. 9. Where there is no agreement between the parties, or~~  
 15 ~~where there is an agreement but the parties~~ **IF THE PARTIES HAVE NO**  
 16 **COLLECTIVE BARGAINING AGREEMENT OR** have begun negotiations or  
 17 discussions looking to a new agreement or ~~amendment of~~ **TO AMEND** the  
 18 existing agreement, and wage rates or other conditions of  
 19 employment under the proposed new or amended agreement are in  
 20 dispute, the arbitration panel shall base its findings, opinions  
 21 and order upon the following factors, as applicable:

22 **(A) THE FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT TO MEET**  
 23 **THESE COSTS.**

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

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

26 **(D)** ~~(c)~~ The interests and welfare of the public. ~~and the~~  
 27 ~~financial ability of the unit of government to meet those costs.~~

1           (E) ~~(d)~~—Comparison of the wages, hours, and conditions of  
2 employment of the employees involved in the arbitration proceeding  
3 with the wages, hours, and conditions of employment of other  
4 employees performing similar services and with other employees  
5 generally:

6           (i) In public employment in comparable communities.

7           (ii) In private employment in comparable communities.

8           (F) **COMPARISON OF THE WAGES, HOURS, AND CONDITIONS OF**  
9 **EMPLOYMENT OF OTHER EMPLOYEES OF THE UNIT OF GOVERNMENT OUTSIDE OF**  
10 **THE BARGAINING UNIT THAT IS SUBJECT TO ARBITRATION.**

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

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

18           (I) ~~(g)~~—Changes in any of the foregoing circumstances during  
19 the pendency of the arbitration proceedings.

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

26           Sec. 10. A majority decision of the arbitration panel, if  
27 supported by competent, material, and substantial evidence on the

1 whole record, ~~shall be~~ **IS** final and binding upon the parties, and  
2 may be enforced, at the instance of either party or of the  
3 arbitration panel in the circuit court for the county in which the  
4 dispute arose or in which a majority of the affected employees  
5 reside. The commencement of a new municipal fiscal year after the  
6 initiation of arbitration procedures under this act, but before the  
7 arbitration decision, or its enforcement, ~~shall not be deemed to~~  
8 **DOES NOT** render a dispute moot, ~~or to~~ otherwise impair the  
9 jurisdiction or authority of the arbitration panel or its decision.  
10 Increases in rates of compensation or other benefits may be awarded  
11 retroactively to the commencement of any ~~period(s)~~ **PERIOD OR**  
12 **PERIODS** in dispute, any other statute or charter provisions to the  
13 contrary notwithstanding. At any time the parties, by stipulation,  
14 may amend or modify an award of arbitration.