

Compulsory Arbitration of Labor Disputes in Police and Fire Departments (PA 312)

Introduction

Public Act 312 of 1969 (PA 312) established a system of mandatory binding arbitration for labor disputes in municipal police and fire departments. PA 312 provides for the selection of, and authority given to, arbitrators. PA 312 also prescribes the procedures for the arbitration process.

Impact of PA 312

PA 312, in effect, gives power to an individual arbitrator to determine police and fire wages, benefits, and other terms and conditions of employment. Despite its good intentions, PA 312 made it very difficult for local elected and appointed officials to control their largest cost: personnel. It also added significantly to the costs of labor relations, the length of time the process takes, and in many cases, resulted in more contentious labor relations.

Perhaps of greatest concern was arbitrators' heavy reliance on external pay data in the PA 312 process. This resulted in police/fire employees having significantly more generous compensation packages than other employees working for the same municipality. This type of disparity compromises internal equity in favor of comparisons with an external labor market. Further, the external market considered in the arbitration process often overlooked a community's location, size, or financial health.

For decades, community leaders argued that the law did not effectively require an arbitrator to consider a community's ability to pay. There are many cases, e.g. the city of Hamtramck in 1999, where an arbitrator determined a community could not afford to pay what was proposed by the union; however, the wage or benefit increases were awarded nonetheless.

2011 Changes

In 2011, for the first time since 1977, Act 312 was amended. Among other things, the 2011 amendments:

- Required that an arbitrator consider a community's *ability to pay as the primary factor* in an arbitration proceeding;
- Required the arbitrator to consider the financial impact of an award on the community; the interests and welfare of the public; all liabilities (even if they don't appear on a balance sheet) and any directive issued by an emergency manager under PA 4 of 2011, which addresses emergency management of local government and the powers of a state appointed emergency manager;
- Required that an arbitrator consider *internal comparables*. Prior to this change, there was no requirement that an arbitrator consider the pay and benefits of other bargaining units within the governmental unit. The use of internal comparables shows a more complete picture in the arbitration process and helps to preserve internal equity and morale within the organization;
- Shortened the process by requiring that arbitration be completed in 180 days;
- Moved up the parties' last best offers, requiring submission following mediation;
- Enhanced consistency in the process by requiring the Employment Relations Commission to establish training standards for arbitrators; and

- Extended PA 312 protection to certain public authorities, including those created by one or more local units of government for police and fire protection. It does not, however, include community college authorities, metropolitan authorities, or 9-1-1 authorities. Authorities in existence as of June 1, 2011, that were organized by a labor union or under a contract are subject to PA 312. Authorities in existence as of June 1, 2011, that were *not* organized by a union or under a contract are NOT covered under PA 312. However, should the exempted authority expand, it would become subject to PA 312.

2014 Changes

Since 2011, there has been one substantive change to Act 312, taking place in 2014. In that change, the Legislature amended Section 9(l) and added as a factor to be taken into consideration with respect to the issue of the governmental unit's financial ability to pay, if applicable, a written document with supplementary information relating to the government unit's financial position that is filed with the arbitration panel by a financial review commission as authorized under the Michigan Financial Review Commission Act (Act 181 of 2014).

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