

HOUSE BILL No. 6154

May 11, 2010, Introduced by Reps. Miller, Meadows, Neumann, Rick Jones, Polidori, Byrum and Sheltroun and referred to the Committee on Labor.

A bill to provide for compulsory arbitration of labor disputes in public corrections facilities; to provide for the selection of members of arbitration panels; to prescribe the procedures and authority of arbitration panels; and to provide for the enforcement and review of decisions of the arbitration panels.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "corrections officer compulsory arbitration act".

3 Sec. 2. It is the public policy of this state that in public
4 corrections facilities, where the right of employees to strike is
5 prohibited by law, it is requisite to the high morale of the

1 employees and the efficient operation of those public corrections
2 facilities to afford an alternate, expeditious, effective, and
3 binding procedure for the resolution of disputes, and to that end
4 the provisions of this act, providing for compulsory arbitration,
5 shall be liberally construed.

6 Sec. 3. As used in this act:

7 (a) "Commission" means the employment relations commission
8 created in section 3 of 1939 PA 176, MCL 423.3.

9 (b) "Corrections officer" means any individual employed by or
10 under the authority of a county sheriff who is engaged in the
11 supervision, control, or management of individuals in the custody
12 of a county sheriff.

13 (c) "Public corrections facility" means any county corrections
14 facility used to house or detain individuals in the custody of the
15 county sheriff that has employees engaged as corrections officers
16 and that is established by any of the following:

17 (i) A county.

18 (ii) A county sheriff.

19 (iii) An authority, district, board, or any other entity created
20 independently or jointly by or between 1 or more governmental
21 bodies, whether created by statute, charter, ordinance, resolution,
22 delegation, or any other mechanism.

23 Sec. 4. (1) In mediating a public corrections facility
24 employee dispute that is not a dispute concerning the
25 interpretation or application of an existing agreement, each party
26 shall submit a last offer of settlement on all issues in dispute to
27 the mediator and the other party within the time limit the mediator

1 prescribes. A last offer of settlement shall not be modified after
2 it is submitted without written consent of both parties.

3 (2) If the dispute has not been resolved to the agreement of
4 both parties within 30 days after submitting the last offer of
5 settlement, the employees or employer may initiate binding
6 arbitration proceedings by submitting a written request to the
7 employment relations commission and a copy to the other party.

8 Sec. 5. Within 10 days after the end of the 30-day period, the
9 employer shall choose a delegate, and the employees' designated or
10 selected exclusive collective bargaining representative, or if
11 none, their previously designated representative in the prior
12 mediation procedure, shall choose a delegate to a panel of
13 arbitration as provided in this act. The employer and employees
14 shall promptly advise the other of their selected delegate.

15 Sec. 6. Within 7 days after a request from 1 or both parties,
16 the employment relations commission shall select from the Michigan
17 employment relations commission panel of arbitrators established
18 under section 5(2) of 1969 PA 312, MCL 423.235, 3 persons as
19 nominees for impartial arbitrator of the arbitration panel. Within
20 5 days after the selection, each party may peremptorily strike the
21 name of 1 of the nominees. Within 7 days after this 5-day period,
22 the commission shall designate 1 of the remaining nominees as the
23 impartial arbitrator of the arbitration panel.

24 Sec. 7. Upon appointment, the impartial arbitrator shall
25 proceed to act as chairperson of the 3-person arbitration panel,
26 call a hearing to begin within 15 days, and give reasonable notice
27 of the time and place of the hearing. Before the hearing, the

1 commission shall provide the chairperson with the final offer of
2 settlement that each party submitted during mediation. Upon
3 application, for good cause shown, and upon terms and conditions
4 that are just, the arbitration panel shall grant leave to intervene
5 to a person, labor organization, or governmental unit that has a
6 substantial interest in the dispute. The arbitration panel may
7 receive into evidence any oral or documentary evidence or other
8 data that it considers relevant. The proceedings shall be informal.
9 Technical rules of evidence do not apply, and the failure to comply
10 with technical rules of evidence does not impair the competency of
11 the evidence. A verbatim record of the proceedings shall be made,
12 and the arbitrator shall arrange for the necessary recording
13 service. Transcripts may be ordered at the expense of the party
14 ordering them, but transcripts are not necessary for a decision by
15 the arbitration panel. The commission shall establish the expense
16 of the proceedings in advance, including a fee to the chairperson.
17 The parties shall bear that expense equally. The delegates, if
18 public officers or employees, shall continue on the payroll of the
19 public employer at their usual rate of pay. The hearing conducted
20 by the arbitration panel may be adjourned from time to time but,
21 unless otherwise agreed by the parties, shall be concluded within
22 30 days of the date it begins. Actions and rulings of a majority of
23 the arbitration panel are considered the actions and rulings of the
24 entire panel.

25 Sec. 8. The arbitration panel may administer oaths and issue
26 subpoenas to require the attendance of witnesses and the production
27 of books, papers, contracts, agreements, and documents that it

1 considers material to a just determination of the issues in
2 dispute. If any person refuses to obey a subpoena or refuses to be
3 sworn or to testify, or if any witness, party, or attorney is
4 guilty of any contempt while attending any hearing, the arbitration
5 panel may, or the attorney general if requested shall, invoke the
6 aid of any circuit court for the county within which the hearing is
7 being held, which court shall issue an appropriate order. Failure
8 to obey the order may be punished by the court as contempt.

9 Sec. 9. At any time before the panel renders an award, the
10 chairperson may remand the dispute to the parties for further
11 collective bargaining for a period not to exceed 3 weeks. The time
12 provisions of this act shall be extended for a time period equal to
13 that of the remand. The chairperson of the arbitration panel shall
14 notify the employment relations commission of the remand.

15 Sec. 10. At the conclusion of the hearing held under section
16 7, each party shall present oral argument or, at the request of
17 both parties, the panel shall direct the parties to submit
18 posthearing briefs in support of the last offer of settlement,
19 which briefs shall be made part of the record. At the conclusion of
20 oral argument or after the submission of posthearing briefs, the
21 hearing shall be closed and no further oral or documentary evidence
22 or argument shall be presented by either party without unanimous
23 agreement of the arbitration panel. Within 30 days after the
24 conclusion of the hearing or after any further additional periods
25 to which the parties agree, the arbitration panel shall make
26 written findings of fact and promulgate a written opinion and order
27 upon the issues presented to it and upon the record made before it

1 and shall mail or otherwise deliver a true copy of the opinion and
2 order to the parties and their representatives and to the
3 employment relations commission. The arbitration panel shall adopt
4 the party's entire last offer of settlement that, in the opinion of
5 the arbitration panel, more nearly complies with the applicable
6 factors prescribed in section 11. The findings, opinion, and order
7 shall be based upon the applicable factors prescribed in section
8 11.

9 Sec. 11. If the parties have no agreement or have begun
10 negotiations or discussions involving a new or amended agreement in
11 which wage rates or other conditions of employment are in dispute,
12 the arbitration panel shall base its findings, opinions, and order
13 upon the following factors, as applicable:

14 (a) The lawful authority of the employer.

15 (b) Stipulations of the parties.

16 (c) The interest and welfare of the public and the financial
17 ability of the unit of government to meet the costs.

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

22 (i) Public employment in comparable communities.

23 (ii) Private employment in comparable communities.

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

26 (f) The overall compensation presently received by the
27 employees, including direct wage compensation; vacations, holidays

1 and other excused time; insurance and pensions; medical and
2 hospitalization benefits; the continuity and stability of
3 employment; and all other benefits received.

4 (g) Changes in circumstances concerning any of the factors in
5 subdivisions (a) to (f) while the arbitration proceedings are
6 pending.

7 (h) Other factors that are normally or traditionally taken
8 into consideration in determining wages, hours, and conditions of
9 employment through voluntary collective bargaining, mediation,
10 fact-finding, arbitration, or otherwise between the parties, in the
11 public service or in private employment.

12 Sec. 12. A majority decision of the arbitration panel, if
13 supported by competent, material, and substantial evidence on the
14 whole record, is final and binding upon the parties. Either party
15 or the arbitration panel may enforce the decision in the circuit
16 court for the county in which the dispute arose or in which a
17 majority of the affected employees reside. The beginning of a new
18 municipal fiscal year after arbitration proceedings are initiated,
19 but before the arbitration decision is rendered or enforced, does
20 not render the dispute moot or impair the jurisdiction or authority
21 of the arbitration panel or the validity of its decision. Increases
22 in rates of compensation or other benefits may be awarded
23 retroactively to the beginning of any period in dispute, any other
24 statute or charter provisions to the contrary notwithstanding. At
25 any time the parties may, by stipulation, amend or modify an award
26 of arbitration.

27 Sec. 13. If an employee organization recognized under 1947 PA

1 336, MCL 423.201 to 423.217, as the bargaining representative of
2 employees subject to this act willfully disobeys a lawful order a
3 court issues as provided in section 12 or willfully encourages or
4 offers resistance to that order, whether by a strike or otherwise,
5 the court may impose a fine of not more than \$250.00 for each day
6 that the contempt persists. If an employer willfully disobeys a
7 lawful court order of enforcement or willfully encourages or offers
8 resistance to the order, the court may impose a fine against the
9 employer of not more than \$250.00 for each day that the contempt
10 persists.

11 Sec. 14. Orders of the arbitration panel are reviewable by the
12 circuit court for the county in which the dispute arose or in which
13 a majority of the affected employees reside, but only on the basis
14 that the arbitration panel was without or exceeded its
15 jurisdiction; the order is unsupported by competent, material, and
16 substantial evidence on the whole record; or the order was procured
17 by fraud, collusion, or other similar and unlawful means. Review
18 proceedings do not automatically stay the order of the arbitration
19 panel.

20 Sec. 15. (1) While proceedings are pending before the
21 arbitration panel, a party shall not change existing wages, hours,
22 or other conditions of employment without the consent of the other
23 party. A party may consent to proposed modifications without
24 prejudice to rights or positions under this act.

25 (2) A charge that a violation of subsection (1) has occurred
26 shall be filed with the employment relations commission. The
27 commission shall call a hearing and render a decision within 45

1 days of the filing. The commission may remedy the violation as
2 provided in section 16 of 1947 PA 336, MCL 423.216.

3 (3) A charge filed under subsection (2) does not automatically
4 stay proceedings before the arbitration panel.

5 (4) A party aggrieved by a final order of the commission that
6 grants or denies, in whole or in part, the relief sought under this
7 section may obtain review of the order in the court of appeals as
8 provided in section 16(e) of 1947 PA 336, MCL 423.216. Appeal to
9 the court does not automatically stay the order of the commission.

10 Sec. 16. (1) This act does not apply to a dispute between a
11 labor organization representing corrections officers and a public
12 employer if the parties are operating under a collective bargaining
13 agreement that provides for disputes to be submitted to binding
14 interest arbitration.

15 (2) This act is supplementary to 1947 PA 336, MCL 423.201 to
16 423.217, and does not amend or repeal any of its provisions. The
17 fact-finding procedures of that act are inapplicable to disputes
18 subject to arbitration under this act.

19 (3) The employment relations commission shall grant whatever
20 relief is necessary to enforce the provisions of this act, except
21 in those matters expressly reserved in this act to the circuit
22 court.

23 Sec. 17. A person shall not be sentenced to a term of
24 imprisonment for any violation of this act or an order of the
25 arbitration panel.