

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

BUREAU OF EMPLOYMENT RELATIONS

EMPLOYMENT RELATIONS COMMISSION

ADMINISTRATION OF COMPULSORY ARBITRATION ACT FOR LABOR DISPUTES IN
MUNICIPAL POLICE AND FIRE DEPARTMENTS

(By authority conferred on the employment relations commission by section 7 of Act No. 176 of the Public Acts of 1939, as amended, and section 33 of Act No. 306 of the Public Acts of 1969, as amended, being SS423.7 and 24.233 of the Michigan Compiled Laws)

R 423.501 Definitions; A to D.

Rule 1. As used in these rules:

(a) "Act 312" means Act No. 312 of the Public Acts of 1969, as amended, being S423.231 et seq. of the Michigan Compiled Laws.

(b) "Advocate" means an individual who has represented management or a union in the past 5 years prior to his or her appointment to the arbitration panel. Advocate also means an attorney who is associated with a firm that has represented management or a union in the past 5 years prior to his or her appointment to the arbitration panel.

(c) "Arbitration hearing panel" means the impartial arbitrator or chair and 2 delegates who conduct an act 312 arbitration hearing.

(d) "Arbitrator" means an individual who is appointed by the commission to the Michigan employment relations commission panel of arbitrators to be an impartial arbitrator or chair of the arbitration panel in an act 312 arbitration hearing.

(e) "Commission" means the employment relations commission as established in section 3 of the LMA.

(f) "Commission's panel of arbitrators" means those members who are appointed to the Michigan employment relations commission panel of arbitrators by the commission.

(g) "Delegate" means an employee or employer representative who sits on the act 312 arbitration hearing panel.

(h) "Dispute" means a disagreement regarding mandatory subjects of bargaining concerning rates of pay, wages, hours of employment, or other conditions of employment.

History: 1995 AACCS.

R 423.502 Definitions; L to P.

Rule 2. As used in these rules:

(a) "LMA" means Act No. 176 of the Public Acts of 1939, as amended, being S423.1 et seq. of the Michigan Compiled Laws.

(b) "Mediator" means the commission, a commission member, or an employee who is designated by the commission to perform the functions and duties of mediation pursuant to the provisions of act 312, LMA, and PERA in the commission's mediation division.

(c) "PERA" means Act No. 336 of the Public Acts of 1947, as amended, being S423.201 et seq. of the Michigan Compiled Laws.

(d) "Petition" means the document that contains the information specified in R 423.505.

(e) "Petitioner" means a person or duly authorized agent thereof who files a petition pursuant to the provisions of act 312 for compulsory arbitration.

History: 1995 AACCS.

R 423.503 Mediation.

Rule 3. (1) It is the policy of the commission to encourage parties to a labor dispute to settle their disputes through the collective bargaining process subject to section 30 of Act No. 176 of the Public Acts of 1939, as amended, being S423.30 of the Michigan Compiled Laws, and section 15 of Act No. 336 of the Public Acts of 1947, as amended, being S423.215 of the Michigan Compiled Laws. If the issues in dispute cannot be resolved through the collective bargaining process, either party may request, or the commission may initiate, mediation.

(2) Upon the request of one of the parties to the dispute, or upon its own initiative, the commission shall appoint a mediator.

(3) The mediator may do any of the following:

(a) Arrange for, hold, adjourn, or reconvene a conference or conferences between the disputants or any of their representatives, or both.

(b) Invite the disputants or their representatives, or both, to attend the conference and submit, either orally or in writing, their disputes.

(c) Discuss the disputes with the disputants or their representatives.

(d) Assist in negotiating and drafting agreements for the adjustment or settlement of the disputes.

(4) A mediator shall be subject to the confidentiality requirements imposed by the provisions of Act No. 336 of the Public Acts of 1947, as amended.

History: 1995 AACCS.

R 423.504 Report to commission.

Rule 4. If binding arbitration proceedings are initiated, the mediator shall submit a written mediation report to the commission. The report shall include the following information:

(a) A list of all matters which were formerly at issue and which have been resolved.

(b) The date that the dispute was submitted to mediation and the number of bargaining and mediation sessions held.

(c) A recommendation to the commission as to whether it would be useful or beneficial to remand the dispute to the parties for further collective bargaining.

History: 1995 AACCS.

R 423.505 Petition to initiate compulsory arbitration.

Rule 5. (1) The petition shall be prepared on a form furnished by the commission. The original shall be signed. The original shall be served on the other party by registered or certified mail and 3 copies shall be filed with the commission.

(2) The petition shall include all of the following:

(a) The name and address of the public employer involved and the name and telephone number of its principal representative.

(b) The name and address of the collective bargaining representative involved and the name and telephone number of its principal representative.

(c) If applicable, the name of the arbitrator from the commission's panel of arbitrators that the 2 parties have mutually selected.

(d) The name and address of the petitioner and the signature and telephone number of the person executing the petition.

(e) A copy of the most recent labor agreement between the parties.

(f) A copy of the last offer made by each party to settle the agreement.

History: 1995 AACCS.

R 423.506 Arbitrator selection.

Rule 6. (1) If a commission-nominated arbitrator is an advocate, either party may notify the other party and then ask the commission to delete the arbitrator's name from the list of nominees and provide the parties with the name of an arbitrator who is not an advocate. The request will extend the time limits set forth in section 5(1)

of act 312 by whatever reasonable time is necessary for the commission to provide the parties with another arbitrator's name and resume. If an arbitrator is not selected within 10 days, the commission may select an arbitrator.

(2) The parties may mutually agree upon the selection of an arbitrator from the commission's panel of arbitrators or an arbitrator who is eligible for membership on that panel and notify the commission of their selection when the petition is filed.

(3) An arbitrator's resume shall include the following information:

- (a) A brief summary of the arbitrator's educational and professional background.
- (b) A list of the arbitrator's past 5 years of employment.
- (c) A list of the arbitrator's commission arbitration awards and fact finding reports.
- (d) A list that shows the percentage of advocacy work, if any, which was performed by the arbitrator and the arbitrator's firm on an annual basis for the past 5 years.

History: 1995 AACCS.

R 423.507 Arbitration hearing.

Rule 7. (1) An arbitrator shall conduct a prehearing conference within 15 days of the arbitrator's appointment. It may be conducted by telephone conference call.

(2) The prehearing conference shall be used to discuss matters relating to the proceeding, including all of the following:

- (a) Issues raised in the petition for binding arbitration submitted to the commission.
- (b) Issues that the parties have resolved.
- (c) Whether the issues in dispute are economic or noneconomic.
- (d) The dates, times, and place of the hearing.
- (e) The exhibits to be entered into evidence, the method to be used for marking the exhibits, the number of copies of exhibits to be provided by the parties, and the time and means of exchanging exhibits before hearing.
- (f) The list of witnesses to be presented by each party.
- (g) The list of comparables for purposes of wages and benefits.
- (h) The procedural format for the hearing.
- (i) Any subpoenas, stipulations, or depositions.
- (j) Whether oral arguments or written briefs are to be submitted.
- (k) Other matters the panel considers appropriate.

(3) The record shall be the official record of the hearing. Before the first day of the hearing, the arbitrator shall give reasonable notice, in writing, to the commission's court reporting supervisor of the dates, times, and locations of the hearings. A court reporter shall be assigned. If the hearing date is canceled or changed, the arbitrator shall notify the commission's court reporting supervisor immediately. If a transcript of the hearing is made and one of the parties asserts that the transcript is incorrect, then the transcript may be corrected if the errors are substantive. Proposed corrections may be submitted by stipulation or motion to the arbitrator with notice to the other party. After notice and an opportunity to submit statements in opposition by the other party, the arbitrator shall rule on whether or not the transcript will be corrected.

(4) On written application of either party, the panel may issue subpoenas requiring attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control which the panel considers material to a just determination of the issues in dispute. Witnesses who are subpoenaed before the arbitration panel shall be paid the same fees and mileage that are paid to witnesses in the circuit courts. Payment shall be made by the party who requested that the witness appear and shall be made before the time that the witness testifies. An application for a subpoena may be made ex parte.

(5) With the exception of motions that are stated orally on the record at a hearing, all motions shall be made in writing, served on the other party, and shall briefly state the order, ruling, or action that is sought and shall set forth, with particularity, the reasons for such motion. Any party may, by motion, request that the arbitrator take any action which the arbitrator is authorized to take. Any statement opposing a motion shall be promptly filed and shall conform to the requirements of this subrule. The arbitrator shall rule upon motions that are filed with the arbitrator before the close of the hearing. Motions that are made during a hearing shall be ruled on by the arbitrator either during the hearing or at such time as the entire record is considered. All rulings on motions shall

be in writing or, if announced at the hearing, may be stated orally on the record. All motions and any rulings or orders thereon shall become part of the record.

(6) A party shall request the permission of the arbitrator before deposing a person on oral examination. The sole purpose for taking a deposition shall be to preserve evidence. Depositions shall not be taken for the purpose of discovery. Before deposing a person on oral examination, a party shall give reasonable notice, in writing, to the arbitrator and to the other party. The notice shall state all of the following information:

(a) The date, time, and place for taking the deposition.

(b) The name and address of each person to be examined.

(c) If a subpoena has been served and directs the deponent to produce documents or other tangible things, then the designation of the material to be produced, as set forth in the subpoena, shall be attached to, or included in, the notice.

(7) The arbitrator may extend or shorten the time for taking a deposition. The arbitrator shall regulate the scope, time, and order of taking depositions to best serve the convenience of the parties and the witnesses and to expedite the arbitration.

(8) Testimony shall be taken by a court reporter. The examination and cross-examination of a witness shall be allowed. The technical rules of evidence shall not apply. All objections that are made at the deposition shall be noted on the record by the party who makes the objections, including objections to any of the following:

(a) The manner of taking the deposition.

(b) The evidence presented.

(c) The conduct of the party.

(9) On request of a party, documents and things that are produced for inspection during the examination of a witness shall be marked for identification and annexed to the deposition, if practicable, and may be inspected and copied by either party.

History: 1995 AACCS.

R 423.508 Witness examination.

Rule 8. A witness at the hearing shall be examined orally under oath or affirmation administered by the court reporter.

History: 1995 AACCS.

R 423.509 Arbitrator; powers and duties.

Rule 9. (1) In addition to the duties specified in act 312, the panel shall do all of the following:

(a) Obtain a full and complete record.

(b) Place on the record or state in the award all agreements that are reached between the parties, including portions of any previous labor agreement that the parties adopt as part of their current agreement. The award or record shall contain or identify, by specific reference, the parties' stipulated settlement of all issues that were not presented for arbitration and indicate how the issues were resolved.

(c) If the parties agree to a hearing extension, the arbitrator shall reduce the agreement to writing, obtain the signatures of both parties, and notify the commission, in writing, with copies, of all written agreements between the parties that extend the arbitration hearing.

(2) In addition to the powers specified in act 312, the panel may do any of the following:

(a) Rule upon motions and offers of proof, receive relevant evidence, and exclude irrelevant, immaterial, or unduly repetitious evidence.

(b) Question witnesses.

(c) Take depositions or cause depositions to be taken and determine the scope of depositions.

(d) Regulate the date, time, place, and course of the hearings.

(e) Dispose of procedural requests or other similar matters.

(f) Hold conferences during the course of the hearing for the settlement, simplification, or adjustment of the issues by consent of the parties.

(g) Remand the parties to further bargaining with a mediator if the arbitrator believes it will be conducive to an agreement.

History: 1995 AACS.

R 423.510 Close of hearing.

Rule 10. After a hearing is closed, the hearing may be reopened for good cause shown.

History: 1995 AACS.

R 423.511 Filing of briefs and proposed findings.

Rule 11. Any party may, upon a request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, at a time fixed by the arbitrator who conducts the hearing. The arbitrator may direct the filing of briefs when considered warranted.

History: 1995 AACS.

R 423.512 Arbitration panel posthearing conference.

Rule 12. After the close of the hearing and before the rendering of an award, a posthearing conference shall be held at the request of either delegate or the arbitrator. The posthearing conference shall be limited to the delegate of each party and the arbitrator. Any and all matters that have been placed into the record of the hearing may be discussed. The posthearing conference shall not delay the time period specified in section 8 of act 312 for making findings of fact, promulgating a written opinion and order, and mailing copies.

History: 1995 AACS.

R 423.513 Panel findings, opinion, and award.

Rule 13. (1) It is the responsibility of the impartial arbitrator to ensure that the final award is subscribed to by a majority of the arbitration hearing panel.

(2) The arbitrator is responsible for reducing any award extension agreement to writing and for obtaining the signatures of both parties.

(3) The written decision and award of the panel shall contain all of the following information:

(a) The names of both parties.

(b) The advocates for both parties.

(c) The names of the members of the arbitration hearing panel.

(d) Each party's final offer of settlement of the issues in dispute.

(e) A list of the economic and noneconomic issues in dispute as identified by the arbitration hearing panel.

(f) A finding of fact and opinion based on the record made before the arbitration hearing panel. The finding of fact and opinion shall include a detailed discussion of the relation of the criteria specified in section 9 of act 312 to both the economic and noneconomic issues.

(g) The date the decision is rendered.

(h) The signatures of the panel member or members who approved the award.

(4) The arbitrator shall serve a copy of the award on each party and send 8 copies of the award to the commission with the entire record.

History: 1995 AACS.

R 423.514 Costs.

Rule 14. (1) The parties to a hearing may obtain information with regard to the per diem and other charges of the arbitrator upon filing a request with the commission. An arbitrator shall not charge more than 2 preparation days for each day of hearing.

(2) The costs of subpoenas and witness fees shall be borne by the party at whose request subpoenas are issued and at whose request witnesses appeared.

(3) A transcript of a deposition may be ordered at the expense of the party who ordered the transcript. The party who requests a deposition shall pay the costs for the court reporter and for a copy of the transcript of the deposition for the arbitration hearing panel record.

History: 1995 AACCS.