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SPECIAL REPORT: The problems with police and firefighter negotiations

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By [John Bebow](#) - May 7, 2009

Editor's Note: In a preview of the kind of discussions participants can expect at next week's Center for Michigan Government Collaboration and Accountability Action Group meeting, we present this in-depth story on Act 312, an old and controversial law governing cities and townships negotiate pay and benefits with public safety workers.

By Melissa Preddy

Four decades after its adoption, a controversial Michigan law governing police and firefighter contract negotiations continues to divide organized workers and the cities that employ them.

Public Act 312 was sponsored in the late 1960s by Coleman A. Young, then a state senator, partly in response to "blue flu" sickouts by public safety workers seeking to forge more favorable employment pacts.

PA 312 prohibits police officers and firefighters from striking over contract issues. Instead, if an impasse is declared, the parties must by law submit to mandatory binding arbitration. In a nutshell, a three-person panel evaluates the "last best offer" by both the union and the municipality and declares a winner. The law later was revised to cover EMS workers and dispatchers; a similar statute covers labor pacts for state troopers and sergeants.

Municipal leaders say the law is outdated and wreaks havoc on their budgets. In some cases, it's led to police officers receiving more compensation in retirement than active duty, imbalances in compensation between public safety and non-public safety and has even forced local governments to cut services or raise taxes to live up to arbitrators' decisions.

A perennial bone of contention among government leaders, PA 312 has spawned numerous failed attempts at repeal or reform over the decades. While generally popular with labor unions, the law is disliked by municipalities who say its flaws take fiscal control away from negotiators and that decisions often are based on unfair or irrelevant precedents.

Now, with local budgets statewide strapped by dwindling property taxes, reduced state revenue-sharing and other woes, the law is back at the forefront of some activists' agendas. Typically, city leaders say, public safety costs make up 50 percent of municipal budgets, so anything that affects those expenses is on the radar screen these days.

"It doesn't really allow communities to control their own costs," said Samantha Jones Harkins, a legislative associate for the Michigan Municipal League, a lobbying group representing

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Michigan cities. Harkins, like other critics, contends that arbitrators approve pay hikes and other awards without regard to a city's overall resources and ability to pay. Cities bound by arbitrators' rulings may have to dip into reserves, curb compensation for other workers or even raise taxes by enacting special assessments to satisfy police and firefighter contracts, she said.

The law also discourages cost-effective moves like consolidation, Harkins said. Communities that want to combine police, fire or dispatch services under cooperative authorities are stymied because PA 312 doesn't explicitly apply to authorities the way it does to municipalities. Until this gray area in the law is cleared up – and it's not currently being addressed by state administrators — unions would risk losing the recourse to PA 312 in consolidated districts. That means communities seeking to team up and achieve economies of scale may face opposition from public safety unions.

Harkins and state legislators plan to organize a work group this summer to study reform possibilities. Both critics and proponents agree that repeal is unlikely, but some would like the law amended to reflect 21st century pay and benefit issues that are far more complex than those in the 1960s. Not everyone, however, is convinced that the law is outdated or unfair. And alternative suggestions are sparse.

"The act does exactly what it was designed to do: It stops striking," said Fred Timpner, head of the Michigan Association of Police, which represents numerous police officer groups in lower Michigan.

While he feels that arbitration is invoked prematurely by some unions, used sparingly it's an effective tool. "I still believe the best outcome is through successful negotiations between the parties themselves," Timpner said. "But I see no need for legislative changes."

Paul Hufnagel, president of the Michigan Professional Fire Fighters Union, says municipal opposition to PA 312 is "a mountain out of a molehill." Fewer than 5 percent of firefighter contract issues reach binding arbitration, according to his union's internal study

How the system works

Sixty-seven PA 312 cases were filed in Michigan in the 2008 fiscal year, according to the Michigan Employment Relations Commission, which oversees the binding arbitration proceedings. That's down from a 10-year peak of 127 cases in 2005. Before a PA 312 case is filed, the negotiators must submit to mediation if two-sided bargaining fails. Arbitration is a last resort, and even after PA 312 cases are filed, they often are settled before arbitration begins, said Ruthanne Okun, director of the MERC.

Under the law, the employer and the union each file a "last best offer" in issues in dispute. Unlike other states, Michigan allows issue-by-issue arbitration, meaning that some contract line-items are resolved by two-party negotiation, with only the most troublesome issues heading to arbitration.

Three-person panels are composed of one employer delegate, one union representative and one professional arbitrator selected at random from the MERC. If either party objects to the lead arbitrator, alternates are available under the same random selection rules.

In what is typically a months-long process, the panel reviews data, documents and written arguments submitted by each party in support of its case. The panel considers each

unresolved issue separately; it's not uncommon for the final ruling to favor the union position on some items and the employer's proposal on others.

For example, in a September 2008 PA 312 ruling in Shelby Township, the panel awarded 100 percent spousal retiree health insurance per the union's recommendation but accepted the city's argument to leave a pension formula unchanged.

Panel decisions need not be unanimous, and two-to-one splits are not uncommon, critics say, noting that effectively gives all the power to the third-party arbitrator. Proponents don't see a problem with the lack of a unanimity requirement, pointing out that issues wouldn't get to arbitration if the negotiators were able to agree in the first place.

Arbitration considerations

Arbitrators are supposed to consider the following economic factors, according to the statute:

- The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing similar services and with other employees generally. This includes workers in public and private sectors of the comparable communities.
- The cost of living.
- The overall compensation presently received by the employees, including pay, vacations, holidays and other excused time, insurance and pensions, health care benefits, the continuity and stability of employment, and all other benefits received.
- Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- Other factors normally traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Critics – generally the cities – charge that wording in the statute – such as "welfare of the public" and "ability to meet costs" is too vague and doesn't outline priorities for the arbitrators, who currently use their own discretion to weigh the above factors.

"My idea of ability to pay isn't to stop capital investment, stop maintaining equipment and stop providing recreation facilities," said Bill Stewart, Coldwater city manager and a vehement opponent of PA 312. "You have to look at it holistically. But instead, you basically give the authority to a single person to spend the taxpayers' money."

Two years ago, Coldwater spent \$65,000 in administrative costs during PA 312 arbitration with its 30-plus police and fire employees. The city prevailed in dodging retiree health care for firefighters, but Stewart worries about what will happen when the firefighters' contract expires later this year.

"In this environment of economic meltdown, you're going to have communities being less and less able to afford these awards," he said.

Union officials point out that the primary purpose of local government is public safety.

"If priorities are parks, community centers, golf courses and such, then you might have to cut law enforcement," said Bill Birdseye, treasurer of the Police Officers Association of Michigan in Redford. He recalls being part of a Detroit police sickout before PA 312 was enacted. "If you believe the principal goal is public safety and giving those employees a decent wage, then it will have to come at the expenses of other things. The pie is only so big."

Prioritizing the factors arbitrators must consider will be a major aspect of reform proposals, Harkins said. She expects that any amended bill would be introduced this fall.

Areas of dispute

The nature of the comparative documentation is another of the controversial aspects of PA 312 that critics most hope to change. Currently, the parties agree on "comparable" municipalities; then the arbitrators weigh the contract demands against conditions in the comparable cities or towns. That's one of the process's glaring flaws, according to some city officials, especially as complex, formula-driven fiscal matters such as legacy costs, retiree health care funding and a variety of pension plans have supplanted the simple hourly wage as key contract issues. With police and firefighters tending to retire at young ages, due to the nature of their jobs and historic standards, cities can be on the hook for decades of costly pension and health care obligations.

In Southgate, for example, the Michigan Municipal League says PA 312 arbitration has driven up pension benefits to levels that ensure each of its police officers, and likely most firefighters, will retire with incomes greater than the wages at which they were employed – and still young enough to begin careers with other law enforcement agencies.

"Not all arbitrators are economists, and they don't necessarily understand the ramifications of their decisions," said Robert Biga, human resources director for the city of Livonia. Forty years ago, as a temporary employee there, Biga helped prepare the comparables for the state's first PA 312 case. These days, he's a veteran of numerous arbitration hearings and says the process needs reform. He'd like to see arbitrators with more financial and actuarial expertise, since decisions about retiree benefits and other legacy costs can have decades-long effects on city coffers.

Timpner, of the MAP, agrees that better training is needed for PA 312 arbitrators.

"It's a valid criticism," he said. "The issues today are very complex; it's not just a question of whether somebody gets another dollar an hour."

Pay structures are so fragmented these days, Biga argues, that comparing one city's to another's doesn't give a true picture of whether a contract is fair. For example, he said, pay for the roughly 220 public safety officers in Livonia includes base wages plus add-ons like allowances for police officers' guns and special clothing, food stipends for firefighters, pay for certain life-saving certifications and myriad shift, rank and longevity differentials.

Then there are pensions. Livonia uses a defined-contribution plan, similar to the private sector's 401(k), while most municipalities still use the defined-benefit pensions that are wholly employer-funded. It's difficult, he said, to find a comparable community in that regard when negotiating pension

issues. Health care benefits for active workers and retirees add another layer of complexity.

"PA 312 is not keeping up with the times," Biga said. "It's based on old concepts of pay and benefits. The yardstick has to change."

Impact on other workers

Fairness to non public-safety workers is another problematic area, cities say. If they are forced by law to compensate police and firefighters (as well as EMS and 911 dispatchers) at levels decided by third parties, the money may well come at the expense of general municipal employees.

Among the reforms sought by the Michigan Municipal League is an amendment requiring arbitrators to give more weight to "internal comparables" – that is, not just the contracts of public safety workers in similar cities, but of all workers in the city engaged in arbitration.

"Everyone wants to do what's best for police officers and firefighters," said MML's Harkins. "But when times are bad, everyone has to tighten their belts and make concessions."

Hufnagel, of the firefighters union, counters that union expectations are adjusted in tough times, but says it's unfair to compare police officers and firefighters to other types of local government employees.

"The risks, the training, the responsibilities are a lot different," he said. They are completely unique to the jobs we do."

Ideas for reform

Aside from amending the law to emphasize ability-to-pay issues and internal compensation comparables, alternative suggestions to PA 312 are sparse.

Even proponents of that part of the law agree that in the current economic climate, sudden events can rapidly change a city's fortunes, leaving historic demographic, revenue and property valuations moot. Losing a manufacturing plant, for example, or suffering a high rate of home foreclosures, can abruptly alter a city's future revenue prospects and ability to pay.

The municipal league wants lawmakers to consider a "catastrophic event" clause in an amended PA 312, which would reopen arbitration awards (but not negotiated agreements) if a city's economic circumstances changed dramatically. To date, very few arbitration awards have been appealed to circuit court, said the MERC's Okun.

The league also supports a moratorium on pension and retiree health care changes that would increase unfunded liabilities. And it wants specific language in the amended law that would prohibit awards that would be funded by unused millage or assessment capacity. Other changes would include a requirement to evaluate the future effect of any award over a five-year period, and to ensure the award would not require deficit spending.

But short of transforming Michigan into a right-to-work state, decimating union power, the underlying principle of PA 312 is unlikely to go away, observers say

"It's not going to be repealed, and I'm not sure we'd want it to be," said Eric Lupher, director of local affairs for the non-profit Citizens Research Council of Michigan. "Strikes endanger the health and safety of citizens."

Rather, Lupher says more judicious use of costly arbitration is needed.

"The number of issues subject to arbitration has just exploded," he said. The original intent was to cover salaries and a few basic benefits.

In a preliminary study, he said, the CRC identified 158 different issues that were decided by an arbiter over a 10-year period. Of them, 95 were directly related to pay and benefits. The rest involved work schedules, discipline policy, the ability to select shifts and stations, drug testing, vacation, sick, and maternity leave as well as odd issues not envisioned when the law was designed.

"Now you have arbitrators determining the right of firefighters to have a television in the firehouse and what hours it can be viewed," Lupher said. "Minutia."

Another problem is the historic expectation that all contract negotiations will lead to some sort of gain for workers. That simply may not be possible in an era of waning revenue – but cities who fear the loss of fiscal control that arbitration means may sometimes feel pressured into preemptive concessions.

Even though PA 312 is invoked in relatively few contract disputes, "it has impact beyond the number of arbitration cases," said Luke Forrest, public policy director for the Michigan Suburbs Alliance. "It changes the dynamics of the negotiations."

Like the municipal league, the Ferndale-based MSA suggested in a paper last year that PA 312 be amended to limit the number of issues that can be escalated to arbitration, to raise the priority level of the internal comparables and to prohibit awards that would send cities into receivership.

"Municipal revenues are not keeping up with inflation," Lupher said. "So how you handle these police and fire costs is vital to the health of municipalities."

This entry was written by [John Bebow](#) and posted on at 11:57 am and filed under [Accountability](#), [Fresh Thoughts](#), [Government Collaboration](#), [The Center at Work](#). Bookmark the [permalink](#). Follow any comments here with the [RSS feed for this post](#). [Post a comment](#).

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