

PA 312: Mandatory Binding Arbitration

Public Act 312 of 1967 requires that if there is impasse in negotiations between a community and its public safety union (police or fire), then they have to go to mandatory binding arbitration. Usually this means that a contract could not be agreed to in collective bargaining or mediation. The arbitration panel is made up of three arbitrators – one from the union, one from the employer, and one assigned from the Michigan Employment Relations Commission (MERC). For each issue of economic status (i.e. wage, benefits), each party presents their last and best offer to the arbitration panel, and the panel chooses one or the other. For non-economic issues (i.e. work schedule, vacation days, etc), each party submits their request and the arbitrators can split the difference.

Arbitration hearings can be long and contentious. Because arbitrators tend to try to “split the baby”, parties can try to manipulate the process. An example would be providing last best offers of things that they know they won’t get (throw-away items) in order to actually get the ones they want (i.e. asking for a 10% pay raise, retiree health care, and 1 more day off – the pay raise and retiree health care would likely be thrown out and the day off would be granted, which is what the union really wants anyway). Locals have some major complaints about arbitrators, such as not taking into account the ability of a community to pay, assigning new huge burdens in terms of wage and benefits, taking a long time which can result in retroactive awards, etc.

Approximately 75% of the budget of a local unit of government is human resources. Approximately 50% of that is public safety. Due to PA 312, police and fire unions receive much higher wages and benefits than all other employees. We have several reports indicating this. Governor Granholm’s Task Force Local Government Services and Fiscal Stability Panel called for changes. As did the Governor’s Emergency Financial Advisory Panel. Greatly increasing local costs have mostly resulted because of increased costs associated with police and fire - and locals can do nothing about it because these costs are out of our hands due to PA 312. Either awards, or the threat of going to PA 312 arbitration and losing, have caused local elected officials to spend more dollars – tax dollars – than the community could afford to otherwise. Thus any calls by the Governor, Legislature, or anyone else for locals to have “greater efficiencies” or reduce costs are largely disingenuous because these same state elected officials refuse to address PA 312.

The MML has been working to repeal PA 312 ever since it was enacted. Coleman Young as a State Senator sponsored this legislation. When he was elected Mayor of Detroit, though, he indicated it was the biggest mistake that he made. Because repeal is not a political reality, the MML has proposed several changes to PA 312 that would create efficiencies in local government. These new guidelines in the Act would include:

1. Arbitrators must consider a local unit’s ability to pay
 - the total economic cost of an arbitrator’s award cannot exceed the total percentage of increase of the local units’ General Fund Revenue (excluding re-appropriation of fund equity) or the Consumer Price Index, whichever is less
 - impact on the community of any award over a minimum five year period from the date of the award must be considered
 - prohibit arbitrators from considering unused millage or assessment capacity (i.e. requiring tax increases to pay the award)

- require consideration of all liabilities whether or not they appear on the balance sheet of a local government (i.e. GASB 45)
 - Prohibit changing the priorities of a local government by specifying funds previously identified for a different governmental purpose. (i.e. requiring a community saving for a new water treatment plant to redirect those savings to 312 awards)
2. Internal Comparables – require arbitrators to place more significance on internal comparables than external ones when rendering a decision to better reflect the local ability and willingness to pay employees, capture the mood and spirit of the community, and demonstrate what a community feels is appropriate to pay all of its employees.
 3. Comparable Communities - provide that “comparable communities” means communities with similar characteristics (i.e. organizational structure, population, taxable value (TV), TV per capita, number of employees subject to binding arbitration)
 4. Pensions and Retiree Health Care – Prohibit awards that change pensions or retiree health care and result in an increase in the unfunded accrued liability of a local unit.
 5. Limiting or eliminating retroactivity of awards
 6. Catastrophic Event – Many times a community is faced with a catastrophic economic event that dramatically changes its financial viability. When a community is forced to abide by the decision of an arbitrator and a catastrophic economic event occurs, the parties should be able to return to arbitration to reconsider the economic facts. This would only apply to awards, and not negotiated agreements.

The MML has worked with several multi-client lobbyists who represent local units of government to try to get this as part of a budget deal. These include Terry Vanderveen (Wyoming), GCSI (Grand Rapids, Detroit, Taylor, Canton, Ypsilanti, others), Jeff McAlvey (East Lansing), and others.

The MML is also working with other organizations that have made PA 312 reform an integral part of their government reforms agenda. These include the Michigan Chamber of Commerce, the Michigan Manufacturers Association, the Detroit Regional Chamber of Commerce, the Michigan Association of Counties and Detroit Renaissance.