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No. 957 January 1986

COMPULSORY ARBITRATION IN MICHIGAN

The Michigan legislature in 1969 adopted compulsory arbitration for municipal police and firefighters. Since its adoption, the act has undergone legal challenges and continuing controversy with respect to its effectiveness. This analysis describes the statutory provisions of the act, presents empirical evidence with respect to performance under the act, and examines alternatives to and improvements which might be made in the Michigan statute. A more detailed treatment of this subject (40 pages) in the form of Report No. 279 is available upon request from the Research Council.

BACKGROUND AND PROVISIONS OF THE ACT

Historical Background

The Hutchinson Act, Public Act 336 of 1947, prohibited strikes by public employees and contained substantial penalties for its violation. The Hutchinson Act was amended by Public Act 379 of 1965 and is now generally known as the Public Employment Relations Act or PERA. While continuing the prohibition against strikes by public employees, PERA granted public employees the right to unionize and gave public employers the duty to bargain with such unions. Because several police and firefighter strikes ensued, in 1966 the Governor appointed a five-member advisory committee to make findings and recommendations with respect to the impact of PERA. The committee recommended, among other things, adoption of a compulsory arbitration process for police and firefighters.

The statutory purpose of Act 312 of 1969 is to provide for an "alternate, expeditious, effective and binding procedure for the resolution of disputes" involving municipal employers and police, firefighters, and emergency medical service and telephone operator personnel employed by municipal police or fire departments. The term "municipal" includes any city, village, township, or county. The arbitration provided for is compulsory in the sense that the request for arbitration by either the employer or the employee union invokes a process which ultimately binds both parties. Act 312 is an example of interest arbitration, which involves the making of an employment contract that may cover both economic and noneconomic issues, but not the resolution of a dispute arising under an existing contract. The act is administered by the Michigan Employment Relations Commission (MERC), within the state Department of Labor.

The Arbitration Process

Under the provisions of Act 312, any issue in the negotiation of an employment contract remaining unresolved after 30 days of mediation can be submitted by either party to arbitration that is binding on both parties. The dispute is arbitrated by a panel of three members — a delegate selected by the union; a delegate selected by the employer; and a chairman selected from a list of three arbitrators provided by MERC, with each party to the dispute able to strike one name. The act sets forth a basic timetable and structural framework within which the arbitration process is to transpire and criteria which are to be considered in fashioning an award. The arbitration panel must choose between the last offers of the parties on each economic issue in dispute but may fashion its own resolution to each noneconomic issue.

EMPIRICAL FINDINGS

Basic Criticisms of Compulsory Arbitration in Michigan

There are a number of criticisms voiced with respect to the performance and operation of Act 312. These criticisms range from the practical to the philosophical. An example of the former would be the contention that the process tends to take too long and of the latter, the allegation that the arbitration process infringes upon home rule in the broad sense of that term.

Practical Considerations

Among such criticisms are notably: that the process may adversely affect the ability of the parties to reach voluntary agreement, thus resulting in repeated utilization of arbitration; that the process takes too long; that arbitrated awards result in higher salaries or are more costly than settlements would be in absence of arbitration; that the process reflects a favorable bias toward unions; and that the quality and performance of arbitrators needs to be Improved.

Major Findings

a. Does the availability of the process adversely affect the ability of parties to reach voluntary agreement? An examination of those 36 local units of government that have been most involved in compulsory arbitration cases reveals two significant patterns:

- Twenty-two (61%) are located in the metropolitan-Detroit counties of Wayne (11), Oakland (5), and Macomb (6).
- All of the nine most populous cities and the two most populous counties in the state are included.

While the data indicate that populous and metro-Detroit localities are heavily involved in arbitration, it is not clear that the overall frequency of resort to arbitration is grow-

ing. A total of 527 cases have gone to arbitration In the past 16 years, an average of 33 per year. Arbitration resolves about 8% of police and fire negotiations in a given year, with the remainder settled by collective bargaining.

b. Does the process take too long? The arbitration process takes longer than contemplated in specific time provisions in the law. Although the statutory timetable is 16 weeks, arbitration cases typically require about a year to finish, and about half take longer than a year.

LENGTH OF TIME ELAPSED BETWEEN PETITION AND AWARD, ACT 312 CASES INITIATED DURING 1980-1983

Cumulative Number and Percentage of Decisions Reached Within Stated No. of Weeks

	1980		1981		1987		1983	
Weeks	No.	%	No.	%	No.	%	No.	%
16	1	4%	0	0%	0	0%	1	2%
52	15	56%	13	52%	22	54%	21	50%
over 52	12	44%	12	48%	20	46%	21	50%

SOURCE: Michigan Employment Relations Commission monthly status reports, March 1981 - September 1985.

c. Do arbitrated awards result in higher salaries or more costly settlements than would happen in absence of arbitration? Higher employment levels — not higher salary levels — explain much of the higher cost burden for police and fire protection in large cities.

1982 POLICE AND FIRE EMPLOYMENT AND PAYROLL COMPARISONS FOR DETROIT, OTHER CITIES OVER 100,000, AND ALL OTHER CITIES IN MICHIGAN

	Detroit	7 Other Cities Over 100,000	Other Cities
Uniformed Police:			
Employment per 10,000 Residents	39.3	20.5	19.4
Payroll per Employee per Month	$2434	$2480	$2288
Payroll per Resident per Month	$9.18	$4.68	$4.07
Uniformed Fire:			
Employment per 10,000 Residents	14.2	13.1	8.5
Payroll per Employee per Month	$2495	$2272	$2097
Payroll per Resident per Month	$3.33	$2.95	$1.77

SOURCE: CRC calculations from **1982 Census of Governments, Compendium of Public Employment**, Table 18.

Data from a sample of cities indicate that police and firefighter pay have been growing faster than that of other municipal employee positions for a number of years, a trend that preceded Act 312 and has continued since. However, the relative performance of police and firefighter pay growth seems to have improved since arbitration was adopted, as shown in the comparisons below (1960-1970 = "before," 1970-1985 = "after").

MEDIAN ANNUAL SALARIES (IN 1985 S) FOR FIVE EMPLOYEE POSITIONS IN 17 MICHIGAN CITIES — 1960, 1970, AND 1985

POSITION	1960 MEDIAN	1970 MEDIAN	% INCREASE OVER 1960	1985 MEDIAN	% INCREASE OVER 1970	% INCREASE OVER 1960
CIVIL ENGR	$25,378	$32,429	28%	$32,725	1%	29%
POLICEMAN	18,680	25,422	36	27,166	7	45
FIREFIGHTER	18,680	23,747	27	26,760	13	43
LABORER	15,223	18,330	20	18,866	3	24
CLERK-TYPIST	12,485	16,135	29	15,558	-4	25

SOURCE: Michigan Municipal League: **Salaries, Wages and Fringe Benefits in Michigan Municipalities Over 4,000 Population;** CRC calculations.

d. Does the process reflect a favorable bias toward unions? In the 1982-1984 period, employers won a majority of wage issues (52% in 1982, 57% in 1983, and 55% in 1984) and fringe-benefit issues, and employees won a majority of noneconomic issues. While a mere tabulation of issues is not indicative of costs underlying a particular award, the 3-year win-loss distribution has been relatively balanced.

DISTRIBUTION OF ISSUES AWARDED IN ACT 312 DECISIONS BETWEEN EWLOYER ("EMPL") AND UNION ("UN")

	1982			I984			1984		
ISSUE	EWL.	UN.	TOTAL	EMPL.	UN.	TOTAL	EWL.	UN.	TOTAL
Wages	10	9	19	30	23	53	22	18	40
Fringe Benefits	17	13	30	26	32	58	31	13	44
Retirement	14	1	15	9	8	17	18	12	30
Other Economic	29	21	50	50	29	79	38	42	80
Noneconomic Issues	1	4	5	6	8	14	18	30	48

SOURCE: Michigan Municipal League; CRC calculations. Where awards contained multi-year wage items or more than one item affecting a given issue, each item was treated singly; thus the total number of items awarded might exceed the number of awards. Awards are tabulated by the year in which they were decided.

e. Do the quality and performance of arbitrators need to be improved? While there are approximately 140 names on the permanent panel of arbitrators, only 69 participated in decisions during the 1981-1985 period. Data are not available to determine whether those arbitrators who did not hear cases were not included on the three-name lists selected by MERC or were stricken by the parties. As indicated in the table below, almost half the cases were handled by 16 arbitrators.

CASE DISTRIBUTION AMONG ARBITRATORS, 1981-1985

Number of Cases Handled	Arbitrators	Cases	Accounted For
4 or more	16	86	46.5%
1 to 3	53	99	53.5%
TOTAL	69	185	100.0%

SOURCE: Michigan Employment Relations Commission monthly status reports; CRC calculations.

f. Does Act 312 prevent police and fire strikes? Despite the fact that strikes by public employees in the state are illegal, there have been 575 public sector work stoppages since adoption of Act 312, with 74% occurring in school districts. Only one police strike and no fire strikes have been recorded since that time.

Constitutional and Philosophical Considerations

Act 312 is often criticized for reasons having little to do with how effectively or ineffectively it may function. Broadly stated, these criticisms are that the act infringes upon the sovereignty or home rule powers of local units of government, especially with respect to budgetary matters; that the act surrenders the power to tax in violation of the state constitution; and that arbitrators are not accountable to the public and therefore the power they exercise constitutes an unlawful delegation. Each of these arguments has been made before state courts and has been found wanting.

The state supreme court has on two occasions passed on the constitutionality of the act and upheld it. There is of course a strong judicial presumption that the legislature intends to pass constitutional acts. The burden of proving unconstitutionality rests with the party asserting it. The court has gone only so far as to decide whether the legislature could, consistent with the dictates of the state constitution, enact compulsory arbitration legislation. The decision as to the wisdom of such legislation rests with the people of the state and the officials elected to represent them.

CONCEPTUAL ALTERNATIVES

There exist a number of alternative approaches to the Michigan compulsory arbitration procedure. Outside of fundamental change, such as repealing Act 312 or extending its provisions to all local employees, four general approaches might be taken, individually or in combination:

a. Improve data collection and maintenance. The commission might be given administrative staff to compile statistics, follow cases, and analyze arbitration issues and their costs; and might publish awards.

b. Focus on the quality and performance of arbitrators. The commission might specify education and experience criteria for appointment, might require in-service training for inexperienced panelists, might be given a central staff to monitor procedural and time-related aspects of cases.

c. Improve the management of cases by:

(1) Holding the arbitrator accountable. The commission might restrict the power to grant time-limit waivers.

(2) Creating incentives to settle. Lawmakers might require last best offers "up-front," limit the number of issues, require decisions by total package, require payment of interest on awards, limit state sharing of costs of arbitration cases.

d. Improve the content of awards. The commission might require inclusion of certain information in awards, might require cost estimates for each issue and the total package, might provide standard cost-estimating methods.