



Binding Arbitration Amendments May Actually Increase Costs to Local Municipalities

Michael R. Blum & Cole M. Young

Foster Swift Municipal Law News

July 2010

Public employee unions have existed in Michigan since the 1930s, but beginning in 1947, were prohibited from striking upon passage of the Hutchinson Act, which imposed serious penalties on strikers. In 1965, Michigan passed the Public Employment Relations Act (PERA), which encouraged unionization and established a state agency to administer and enforce new rules that were implemented for collective bargaining. Although the PERA preserved the prohibition against strikes, it removed all penalties for engaging in illegal strikes.

By keeping strikes illegal yet removing the penalties, there existed a "de facto right to strike." Among the rash of strikes that followed were strikes by police and fire employees. This led to Public Act 312 of 1969, 312 MCL 423.231 *et seq.*, which provides for compulsory arbitration of labor disputes involving municipal police, fire and emergency service personnel. If negotiations are not successful, Act 312 provides for state-appointed arbitrators to decide the terms of a labor contract. Act 312 has been successful in eliminating police and fire strikes, but it has made negotiations with police and fire unions very difficult.

Since passage of Act 312, the experience of most municipalities is that binding arbitration results in unfair and unaffordable settlements against municipalities. Some claim the process is too long, the arbitrators are insufficiently trained, and costs of arbitration are unfairly incurred by the government. However, the most critical problem with Act 312 arbitration is that arbitrators have generally given too much weight to one of the factors Act 312 requires they consider: the comparison of benefits with those provided by other employers. While this is only one of nine factors in the law, it appears to be the one relied upon most by arbitrators.

Early this year, the Michigan Senate introduced SB 1072 in an effort to address some of these concerns. As written, SB 1072 would amend Act 312 to, among other things, limit the arbitration hearing to a list of issues prepared by the mediator, limit the duration of the arbitration

AUTHORS/ CONTRIBUTORS

Michael R. Blum

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process, and establish training requirements for arbitrators. These provisions seemingly would make the process more efficient. However, SB 1072 would also shift the State's share of the cost of the arbitration proceeding to local units of government and the labor union, so it would likely actually increase local expenditures.

SB 1070 also fails to address the primary issue espoused by local governments: the ability to pay. A key amendment to Senate Bill 1072, the "Patterson amendment," would have required arbitrators to look closer at city finances before awarding police and fire union raises. If it had become law, the Patterson amendment would have directed arbitrators to look at the financial impact of any awards for five years, consider the financial climate of the region and make sure the city is not deficit spending. However, the Patterson amendment was rejected on a voice vote.

Critics claim that without the Patterson amendment, SB 1072 will not result in the savings local government need in police and fire salaries and benefits. Worse, SB 1072 would expand the entities covered by Act 312 to include police, fire, EMS, and dispatch employees of any authority, district, board, or other entity created wholly or partially by resolution, delegation, or any other mechanism. This means that any covered entity, such as a park or airport authority, that employs fire or police personnel, may now be forced into compulsory arbitration.

SB 1072 was passed by the Senate on February 10, 2010, and by the House on June 24, 2010. As of the writing of this article, the Bill has been sent to the Senate for enrollment and then ultimately to the Governor for signature, which may occur soon. Once signed, local entities that have never been through the mandatory binding arbitration process may find themselves scrambling to comply with the new amendments. Attorneys in the Administrative and Municipal Practice Group are monitoring these developments and will be available to provide assistance if this Bill becomes law.