

**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

**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 1939 PA 176, and section 33 of 1969 PA 306, MCL 423.7 and 24.233, and Executive Reorganization Order Nos. 2011-4 and 2011-5, MCL 445.2030 and 445.2031)

**R 423.501 Definitions; A to D.**

Rule 1. As used in these rules:

(a) "Act 312" means 1969 PA 312, MCL 423.231 to 423.247.

(b) "Advocate" means an individual who has represented management or a union in collective bargaining or labor relations in the 5 years prior to his or her selection by the commission as a nominee for an impartial arbitrator or chair of an arbitration hearing panel pursuant to Section 5(1) of 1969 PA 312, MCL 423.235(1). Advocate also means an individual, including an attorney, who is associated with a firm or entity that has represented management or a union in collective bargaining or labor relations in the 5 years prior to his or her selection by the commission as a nominee for an impartial arbitrator or chair of an arbitration hearing panel pursuant to section 5(1) of 1969 PA 312, MCL 423.235(1).

(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; 2014 AACCS.

**R 423.502 Definitions; L to P.**

Rule 2. As used in these rules:

(a) "LMA" means 1939 PA 176, MCL 423.1 to 423.30 .

(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 act 312, LMA, and PERA in the commission's mediation division.

(c) "PERA" means 1947 PA 336, MCL 423.201 to 423.217.

(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.

(f) "Representative" means a person, who may or may not be an attorney, who represents a party in an act 312 proceeding.

History: 1995 AACCS; 2014 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 1939 PA 176, MCL 423.30, and section 15 of 1947 PA 336, MCL 423.215. If the issues in dispute cannot be resolved through the collective bargaining process, then either party may request, or the commission may initiate, mediation.

(2) Upon the request of 1 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) Direct 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 1939 PA 176, MCL 423.1 to 423.30, and 1947 PA 336, MCL 423.201 to 423.217.

History: 1995 AACCS; 2014 AACCS.

### **R 423.504 Mediator's 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) The date of the first mediation conference convened with the parties to the dispute and the number of dates and times of subsequent bargaining sessions and mediation conferences held.

(b) 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; 2014 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 and served on the other party. At the same time, 3 copies, along with a proof of service, 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, fax number, email address, and telephone number of its principal representative.

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

(c) The name and address of the petitioner and the signature, fax number, email address, and telephone number of the person executing the petition.

(d) Date of the first mediation conference convened with the parties to the dispute.

(3) A petition may be dismissed administratively if not filed in accordance with these rules, or if filed before 30 calendar days have passed since the dispute was submitted to mediation as evidenced by the date of the first scheduled mediation conference.

History: 1995 AACCS; 2014 AACCS.

**R 423.506 Arbitrator selection.**

Rule 6. (1) If a commission-nominated panel member is an advocate as defined in R423.501(b), either party may notify the other party and may request that the commission delete the panel member's name from the list of nominees. The commission shall provide the parties with a replacement name of an arbitrator who is not an advocate. The request will extend the time limits in section 5(1) of act 312, MCL 423.235(1), by whatever reasonable time is necessary for the commission to provide the parties with another nominee and resume. If an arbitrator is not selected within 10 days, the commission may select an arbitrator.

(2) Prior to an appointment by the commission, 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.

(3) An arbitrator's resume shall include all 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 and an accurate statement of whether the arbitrator is an "advocate" as defined in R 423.501(b).

(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 or other entity with which the arbitrator has been associated on an annual basis for the past 5 years.

(4) The panel member shall ensure that information contained in the arbitrator's resume is current, including whether the panel member is an "advocate" as defined in R 423.501(b).

History: 1995 AACCS; 2014 AACCS.

**R 423.507 Arbitration hearing.**

Rule 7. (1) An arbitrator shall begin the hearing by conducting a scheduling conference within 15 days of the arbitrator's appointment. The scheduling conference may be conducted by telephone conference call. A court reporter need not be present at the scheduling conference.

(2) The scheduling 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, place, and manner for all of the following:

(i) Exchange of a list of comparable communities to be used under sections 9(d)(i) and 9(d)(ii) of 1969 PA 312, MCL 423.239(1)(d)(i) and MCL 423.239(1)(d)(ii).

(ii) Exchange of applicable collective bargaining agreements or tentative agreements, or both, and applicable documents, if the collective bargaining agreement has not been completed and executed, for all comparable communities not listed by the opposing party.

(iii) The procedure and hearing dates for the determination of issues in subrule 3(a) and (b) of this rule.

(iv) The start of the evidentiary hearing unless that date will be established under subrule 3(d) of this rule.

(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 dates and means of exchanging exhibits before hearing.

(f) The list of witnesses, including experts, 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 arbitrator shall do all of the following:

(a) Make a determination on the economic issues in dispute and the duration of the collective bargaining agreement, and require each party to exchange and submit all of the following:

(i) A statement of the party's issues setting forth the specific changes in the collective bargaining agreement proposed by the party.

(ii) The party's position as to whether each issue is economic or non-economic.

(iii) The proposed duration of the collective bargaining agreement.

(b) Absent mutual agreement, conduct a procedural hearing and advise the parties in writing of the arbitration panel's decision on the issues in dispute including the duration of the collective bargaining agreement, jurisdiction of the arbitration panel concerning any disputed issue and, if in dispute, whether an issue presented by a party is economic.

(c) Direct each party to submit to the arbitration panel and to each other its last offer of settlement on each economic issue by either of the following:

(i) On a date certain after the close of the scheduling conference but prior to the first day of the evidentiary hearing.

(ii) If a procedural hearing has been scheduled, after the submission of the arbitration panel's decision on the procedural issues. Once submitted, a party may withdraw, but not otherwise modify, any economic issue submitted in its last offer of settlement except by stipulation of the parties.

(d) Establish the start date of the evidentiary hearing, if a procedural hearing was held under subrule 3(b) of this rule.

(4) The record shall be the official record of the evidentiary hearing. Before the first day of the evidentiary hearing, the arbitrator shall give reasonable notice, in writing, to the commission's court reporting supervisor of the dates, times, and locations of the evidentiary hearings. A court reporter shall be assigned by the commission or designee. 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 a party 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 the transcript will be corrected.

(5) The cost of the hearing transcript shall be paid by the party or parties requesting the transcript. The cost of a hearing transcript for the benefit of the panel chair shall be divided equally among the parties.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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; 2014 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. Except as permitted under section 7a of act 312, MCL 423.237a, the hearing which includes the filing of any posthearing briefs shall not extend beyond 180 days from the start of the scheduling conference.

(d) After a hearing is closed, the hearing may be reopened for good cause shown.

(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 for a period not to exceed 3 weeks pursuant to section 7a of act 312, MCL 423.237a, if the arbitrator believes it will be conducive to an agreement.

(h) Charge a fee to a party or parties who cancel a hearing date if a cancellation fee is clearly set forth in the arbitrator's resume and made known to the parties at or prior to the scheduling conference.

History: 1995 AACS; 2014 AACS.

#### **R 423.510 Rescinded.**

History: 1995 AACS; 2014 AACS.

#### **R 423.511 Filing of posthearing briefs and proposed findings.**

Rule 11. Any party may, upon a request made before the close of the evidentiary hearing, file a posthearing 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. The filing of a posthearing brief shall not extend the hearing timeline beyond 180 days from the start of the scheduling conference.

History: 1995 AACS; 2014 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 6 of act 312, MCL 423.235, for making findings of fact, promulgating a written opinion and order, and mailing copies.

History: 1995 AACCS; 2014 AACCS.

### **R 423.513 Panel findings, opinion, and award.**

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

(2) The arbitrator shall notify the parties in writing or via email of an extension of up to 60 additional days for issuance of an award.

(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 or any of the issues in the award.

(4) The arbitrator shall serve a copy of the award on each party and send the original and 2 copies of the award, along with an electronic copy of the award, to the commission with the entire record.

History: 1995 AACCS; 2014 AACCS.

### **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 without advance permission to do so from the commission or its designee.

(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.

(4) The costs listed in this rule are in addition to the costs identified elsewhere in these rules.

History: 1995 AACS; 2014 AACS.

**R 423.515 Retention and disposal of commission materials.**

Rule 15. All documents, records, non-records and other materials, public and nonpublic, official and unofficial, shall be maintained and disposed of using the general and bureau specific retention and disposal schedules pursuant to section 5 of 1913 PA 271, MCL 399.5, and section 491 of the Michigan penal code, 1931 PA 328, MCL 750.491.

History: 2014 AACS.