Compulsory Arbitration in Michigan

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EXECUTIVE SUMMARY

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.

History and Statutory Purpose

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. 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 of Michigan 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 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 creates interest arbitration, which involves the making of an employment contract that may cover both economic and non-economic 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 non-economic issue.

Major Findings of the Study

The study focused on several issues concerning the operation of Act 312:

a. Does the availability of the process adversely affect the ability of parties to reach voluntary agreement? The data indicate that populous and metro-Detroit localities are heavily involved in arbitration, but it is not clear that the overall frequency of resort to arbitration is growing.

Arbitration resolves about 8% of police and fire negotiations in a given year.

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

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

d. Does the process reflect a favorable bias toward unions? Issues awarded in the 1982-1984 period were relatively balanced; employers won a majority of wage and fringe-benefit issues, employees a majority of non-economic issues.

e. Do the quality and performance of arbitrators need to be improved? Of the approximately 140 names on the permanent panel of arbitrators, only 69 participated in decisions during the 1981-1985 period. Almost half the cases were handled by 16 arbitrators.

f. Does Act 312 prevent police and fire strikes? Only one police strike and no fire strikes have occurred since 1969.

Options for Improving the Act 312 Process

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 cost-sharing.

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.

COMPULSORY ARIBITRATION 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 report analyzes the Michigan experience with compulsory arbitration and consists of three parts. **Part I** describes the statutory provisions of Act 312. In **Part II**, empirical evidence is presented with respect to performance under the act. **Part III** examines conceptual alternatives to Michigan practices. Two **Appendices** present data with respect to the resort to arbitration by, all local jurisdictions in Michigan, and the Detroit experience with Act 312.

Part I

BACKGROUND AND PROVISIONS OF THE ACT

1. Historical Background

The Hutchinson Act, Public Act 336 of 1947, prohibited strikes by public employees and contained substantial penalties for its violation. The act also permitted public employees the right to meet and confer with their employers on matters affecting wages, hours, and conditions of employment.

The Hutchinson Act was amended by Public Act 379 of 1965 and is now generally known as the Public Employment Relations Act or PERA. PERA granted public employees the right to unionize and gave public employers the duty to bargain with such unions. PERA also lessened the penalties to be imposed for striking, but the general prohibition against public employee strikes was retained.

Because several police and firefighter strikes ensued, in 1966 the Governor of Michigan appointed a five-member advisory committee to make findings and recommendations with respect to the impact of PERA. One of the recommendations of the advisory committee is generally regarded as having provided the impetus for what was to become Public Act 312 of 1969. The final report recommended that attention be focused

> ... on the development of effective collective bargaining and dispute settlement procedures, short of compulsory arbitration, along with a continuance of the existing 'no strike' policy, subject to one exception. We urge adoption, experimentally, of a system of compulsory third-party binding dispute determination in the case of police and firefighters.

Section 48 of article 4 of the state constitution empowers the legislature to "enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service." The state legislature in 1969 adopted compulsory arbitration for police and firefighters on a temporary basis as the advisory committee had recommended. The statute was set to expire June 30, 1972, but was modified by Public Act 127 of 1972 and as modified, was extended to June 30, 1975. The provisions of the act have since been made permanent.

At present, Act 312 provides for compulsory, binding Interest arbitration between 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.

Interest arbitration, of which Act 312 is an example, must be distinguished from grievance arbitration. The former involves the making of an employment contract which may cover both economic and non-economic issues, but not the resolution of a dispute arising under an existing contract.*

Awards which a party considers to be adverse may be appealed to a court of competent jurisdiction, but the reasons for which a court may overturn an award are quite limited. The act is administered by the Michigan Employment Relations Commission (MERC), within the state Department of Labor.

2. Statutory Purpose and Provisions

Section 1 of the act states that

> It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

To suggest, as on occasion has been done, that the act's primary purpose was to prevent strikes is less than accurate. To define Act 312 solely in terms of a strike-prevention statute permits the conclusion that the act has been a success solely because of the dearth of police or firefighter strikes. The better view concerning Act 312 is that it was intended in part to be a substitute for striking. The distinction in purpose between preventing strikes and affording a substitute to the strike is not without substance. The state has had, since 1947, separately enacted legislation which renders illegal strikes by public employees.

The reality, of course, is that while a law can prohibit strikes by public employees, law alone cannot prevent strikes. It has been the

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* The Michigan court of appeals in **Grosse Pointe Farms Police Officers Association** v **Michigan Employment Relations Commission,** 52 Mich App 173 (1974), upheld the commission's denial of arbitration for a grievance dispute where the contract under which the dispute arose contained no provision requiring grievances to be submitted to arbitration.

The legislature amended Act 312 in 1977 to make clear that the act does not extend to "a dispute concerning the interpretation or application of an existing agreement...." This clarifying amendment was accepted as conclusive by the supreme court in **Local 1518** v **St Clair Sheriff,** 407 Mich 1 (1979).

general view that of the variety of public employee disputes that occur, police and firefighter strikes are least tolerable because of the potential harm to persons or property. Because of this view, the state legislature singled out police and firefighter personnel by providing them with an "alternate, expeditious, effective and binding procedure for the resolution of disputes."

The purposes of the procedure created by the act are best defined by its own terms. The statute nowhere explicitly defines the terms "alternate, expeditious, effective and binding," but it may be presumed they were viewed as of equal importance. A reasonable interpretation of the term "alternate" as used in section 1, is that the procedure was to be an alternative or substitute to the strike. The importance of a substitute procedure increases if the legal right to strike be precluded and the unilateral determination of wages, hours, and conditions of employment by the public employer would be inconsistent with "the high morale of such employees and the efficient operation of such departments."

While the legislature did not define what it meant by "expeditious," it did establish a basic timetable within which each of the major steps of the arbitration process was to occur, as if to suggest that the alternate procedure could not be effective unless it was also expeditious. While it is true that several of the time limits may be waived by the parties, it is doubtful that the legislative intent in permitting such waivers was other than to allow flexibility in exceptional cases where strict compliance with time limitations would result in injustice. The term "effective" doubtless referred to the intent that the act provide a mechanism for the resolution of police and fire disputes. Finally, consistent with the legislative intent that the arbitration process be "binding" on the parties, the reasons for which a court may overturn an arbitration award were restricted.

The Process in a Nutshell

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.

Time Sequences

The act sets forth a basic timetable and structural framework within which the arbitration process is to transpire:

- **Petition:** any matter having first been submitted to mediation and not having been resolved to the satisfaction of both parties within 30 days, may be submitted to arbitration by either party.

- **Arbitrator Nomination:** within 7 days of the petition date, MERC must select three arbitrators from its approved list, one of whom will serve as chairman of the arbitration panel.

- **Delegate Selection:** within 10 days of the petition date, each party must select a delegate to serve on the arbitration panel.

- **Arbitrator Selection:** within 12 days of the petition date, each party may strike one arbitrator from the commission list of three.

- **Chairman Designation:** within 19 days of the petition date, the remaining arbitrator is designated the chairman. Should more than one arbitrator remain after the parties have had the opportunity to pare the list, the commission chooses one from among the arbitrators that remain.

- **Hearing:** within 34 days of the petition date, the arbitrator must convene a hearing.

- **Hearing Period:** within 64 days of the petition date (or within no more than 85 days if the arbitrator resubmits the matter to mediation), the hearing must be concluded, unless an extension is agreed to by the parties.

- **Award Period:** within 94 days of the petition date (or within no more than 115 days with resubmission to mediation), the panel must issue an award and the opinion upon which it is based, unless an extension is agreed to by the parties.

Arbitration Panels

The term arbitration panel as used in the statute has a dual meaning. In one sense, it refers to the tripartite body (chairman and party delegates) which actually hears evidence and renders an award. In addition, section 5 of the act requires the commission to appoint a permanent panel of arbitrators, from which individual chairmen may be selected as needed. The permanent panel presently consists of approximately 140 individuals whom the statute requires to be "impartial, competent and reputable citizens of the United States and residents of" Michigan. There is no requirement with respect to education or experience.

Last Best Offer Provisions

As originally enacted, the statute permitted an arbitrator to use conventional arbitration with respect to all issues, whether economic or non-economic. An arbitrator could fashion his or her own awards, often by splitting the difference somewhere between the last offer of the employer and the last offer of the employee representative. The process was criticized as being likely to lead to excessively high awards. It was also criticized for impeding the collective bargaining process by moving the offers of the parties farther apart rather than closer together. It was contended that each party would move toward an extreme position, knowing that the arbitrator would seek a middle ground.

The statute was amended by Public Act 127 of 1972 to retain conventional arbitration for non-economic issues but to require the panel to select from among the final offers made for each economic issue still in dispute -- a compromise that emerged from a legislature divided between retaining conventional arbitration and limiting arbitrators to a

choice -- among final offers on all issues in dispute. The traditional rationale in support of final offer selection, whether by each issue or by total package, is that each party will make a reasonable offer in order to avoid the risk of having the arbitrator select the other party's offer.

Criteria Governing Arbitration Awards -- Judicial Interpretation

Section 9 of the act sets forth the following criteria which are to be considered in fashioning an award. An arbitration panel must consider all applicable factors:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) in public employment in comparable communities.

(ii) in private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including the direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or 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 public service or in private employment.

On two occasions, **Firefighters Union Local No 412 v City of Dearborn,** 394 Mich 229 (1975), and **City of Detroit v Detroit Police Officers Association,** 408 Mich 410 (1980), the state supreme court dealt with the sufficiency of the criteria contained in the act. In the latter case the court held, among other things, that the standards set forth in the act needed be only "as reasonably precise as the subject matter requires or permits" (quoting from **Osius v St Clair Shores,** 344 Mich 693 (1956)).

Michigan case law has made clear that while an arbitration panel must consider each factor upon which evidence is presented, it need not give predominant weight to any one. For example, criterion (a) concerning the lawful authority of the employer, when coupled with criterion (c), might appear at first blush to create ability-to-pay limits for an employer taxing at its legal maximum rates. But the state supreme court in **City of Detroit v Detroit Police Officers Association,** stated that

> [t]he panel acknowledged the city's uncontradicted evidence that it was at the legal limit of its taxing power. Although the panel explicitly recognized these limits on the lawful authority of the employer to tax in rendering its economic award, this factor was not considered conclusive in and of itself; rather it was simply a facet of the city's basic contention that ability to pay was limited.

It is unlikely that an arbitration award would be so substantial as to exceed a municipality's total budget. To suggest a lack of ability to pay therefore means that the revenues the municipality expects to receive over the life of the contract minus the amount it intends to dedicate to other programs will not be sufficient to fund the award. This is basically a matter of budgetary priorities; the court has in effect said that current law allows an arbitration panel the discretion to alter those priorities to make an award fit within taxing limits, if it decides that the public welfare will be served thereby.

Awards -- Effective Date

Section 10 of the original act provided that an arbitration award would take effect only at the start of the next fiscal year, or be retroactive to the start of any fiscal year having commenced after the initiation of arbitration. It was amended by Public Act 303 of 1977 to permit retroactivity to the commencement of any period in dispute, in effect the contract expiration date.

Scope of Judicial Review

The statute provides that either party to the decision may appeal to the circuit court in the county where the dispute arose or where the majority of affected employees reside. Review by the court is limited to allegations that: (i) the arbitration panel was without or exceeded its jurisdiction; (ii) there was an insufficiency of evidence -- i.e., the award was not based on competent, material and substantial evidence on the record as a whole; or (iii) the award was procured by fraud, collusion or the like. The pendency of such appeal does not automatically stay the effects of the award.

Part II

EMPIRICAL FINDINGS

1. 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. Those concerns which stem from a basis of philosophy are not amenable to empirical findings, but such data are of value in an examination of how the Act 312 process functions and how its performance might be improved.

2. 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.

(a) Trends in the Resort to Arbitration

Approximately 493 awards have been rendered since the adoption of compulsory arbitration in Michigan, according to the files of the Labor and Industrial Relations Library at Michigan State University. In addition, 34 cases still were pending as of September 30, 1985, according to the monthly reports of MERC. It should be noted that a substantially larger number of petitions have been filed than the 527 cases mentioned above (about 3 times as many if current trends are indicative), but the others have been settled voluntarily, without award, and are not considered below. Summary data on the jurisdictions involved in these 527 cases are presented in Tables 1 and 2.

Table 1 indicates that there is great variability among units of government with respect to their frequency of participation. Many local units of government repeatedly are involved in Act 312 arbitration while others are involved sparingly or not at all. There are 1,860 cities, villages, townships, and counties in the state of Michigan. This total has varied by less than a tenth of 1% since 1967. Approximately 188 of these local units of government have been involved in arbitration cases since Act 312 was passed, while 1,671 (89.8%) have not been involved. Some of the 1,671 units, it should be noted, have no fire and/or police functions; and among those that do, many have no collective bargaining agreements with employees. Even so, the fact remains that experience with Act 312 is confined to a small fraction of the state's local units of government.

Thirty-six local units of government have been involved in 5 or more arbitration cases each, accounting for 262 or almost one-half of the 527 cases. On the other hand, 152 jurisdictions have been involved 4 or fewer times, accounting for the remaining 265 cases.

Table 1

PARTICIPATION BY UNITS OF GOVERNMENT IN ACT 312 CASES, 1969-1985

Number Of Times Involved In Arbitration	Jurisdictions		Cases Accounted For:		
	No.	Cumulative	No.	Cumulative	Cumulative %
16	1	1	16	16	3.0
13	2	3	26	42	8.0
12	1	4	12	54	10.2
11	1	5	11	65	12.3
10	2	7	20	85	16.1
9	2	9	18	103	19.6
8	3	12	24	127	24.1
7	4	16	28	155	29.4
6	7	23	42	197	37.4
5	13	36	65	262	49.7
4	9	45	36	298	56.6
3	21	66	63	361	68.5
2	44	110	88	449	85.2
1	78	188	78	527	100.0

SOURCES: CRC calculations from files of Michigan State University School of Labor and Industrial Relations Library and Michigan Employment Relations Commission monthly status reports.

Table 2 lists those 36 local units of government that have been most involved in compulsory arbitration cases. Two significant patterns are present:

— 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.

More than one-third of all Act 312 cases have involved these two overlapping groups, which total 25 governmental units. Thus it can be said that heavy use of arbitration to settle police and fire contracts is principally a metropolitan-Detroit and a large-unit phenomenon -- although it is obvious from the table that both smaller and outstate units of government also are involved to a lesser extent.

The data suggest no singular responsibility on the part of the governmental units involved. While statistical data are not readily available, it appears that the vast majority of arbitration petitions are not filed by local units of government, but by the unions with which they negotiate. Regular participation in the arbitration process is, however, a reflection of a continuing mutual inability of both parties -- employer and union in a particular locality to reach voluntary settlement.

Table 2

UNITS OF GOVERNMENT MOST INVOLVED IN ACT 312 CASES

No. of Times Involved In Arbitration	Unit Of Government			
16	DETROIT			
13	DEARBORN	LANSING		
12	SAGINAW			
11	PONTIAC			
10	EAST DETROIT	HARPER WOODS		
9	STERLING HTS.	WARREN		
8	CLINTON TWP.	HIGHLAND PARK	WAYNE COUNTY	
7	FLINT	MANISTEE	MT. CLEMENS	OAKLAND CO.
6	ANN ARBOR BIR-MINGHAM	HAMTRAMCK LIVONIA	MADISON HTS. MIDLAND	MUSKEGON
5	ALPENA BENTON HARBOR ECORSE GARDEN CITY	GRAND RAPIDS GROSSE POINTE GROSSE PTE. FARMS	MONROE CO. PORT HURON PORTAGE	ROSEVILLE SOUTHFIELD WASHTENAW CO.

SOURCES: CRC calculations from files of Michigan State University School of Labor and Industrial Relations Library and Michigan Employment Relations Commission monthly status reports.

The 527 arbitration cases average about 33 cases per year during the 16 years of the existence of Act 312. This average is consistent with the annual totals of cases initiated in the last five years, although 1982 and 1983 saw over 40 cases each:

1980: 27	1982: 41	1984: 36
1981: 25	1983: 42	1985: 10 (through September 30)

Tabulating case totals, however, sheds little light on the key issue - whether the frequency of resort to arbitration has grown. The true rate of resort to arbitration depends on the number of contracts negotiated in a given year, which in turn is affected by the number of bargaining units in existence and the length of contracts; it can be expressed in terms of Act 312 resolutions of contract disputes as a percentage of all contracts negotiated. Table 3 presents data on the rate of resort to arbitration for the period 1980-1984. In 1980 and 1981, and again in 1984, Act 312 cases apparently represented less than 8 percent of all police and fire negotiations; but the

rate was substantially higher in 1982 and 1983.

Table 3

FREQUENCY OF ACT 312 RESOLUTIONS TO POLICE AND FIRE EMPLOYMENT CONTRACT NEGOTIATIONS, 1980-1984

Year	Police and Fire Negotiations	Act 312 Cases	% Of Contracts Settled by Act 312
1980	361	27	7.5%
1981	342	25	7.3%
1982	376	41	10.9%
1983	302	42	13.9%
1984	494	36	7.9%

SOURCES: Police and fire contracts to be negotiated: Police Officers Association of Michigan; the 1984 figure is labeled "preliminary." Act 312 cases: monthly status reports of Michigan Employment Relations Commission; figures include all cases initiated in the given year and carried to award, plus those still pending as of September 30, 1985.

Thus it is not clear that the aggregate frequency of resort to Act 312 to resolve police and fire employment contracts in Michigan local governments has been growing. Whether the experience of 1982 and 1983 represents an aberration, based perhaps on difficult economic circumstances and trends in private-sector collective bargaining, remains to be seen.

(b) Length of Proceedings

Under the statute, the Act 312 process is supposed to be an expeditious means of dispute resolution. That it should be so is in the long-term interest of the general public, which must pay for the contract awarded as a result of the proceedings; municipal management, which must by law adopt a balanced budget each year; and the employees involved, whose terms of employment do not change until contract issues are decided.

Adherence to the statutory timetable (see pages 3-4 above) would result in an arbitration proceeding being concluded within 115 days of its initiation. The 115 days include the possibility of a remand for mediation for a period of up to three weeks. The statute also permits an arbitration panel to waive the 30-day period within which the hearing is to occur and the 30-day period thereafter within which the award is to be rendered. Such extensions require the approval of each party delegate. A primary consideration, therefore, is whether actual proceedings under the act comply with the statutory definition of expeditious dispute resolution -- and if not, where the difficulty lies.

To look at such questions, Research Council staff compiled data for 147 arbitration awards rendered on cases initiated between 1980 and 1984, plus 34 arbitration cases still in process as of September 30, 1985. The data were grouped for analysis by the year in which petitions for arbitration were filed, since it is the filing of a petition that formally initiates the Act 312 process. Looking at the progress

of all cases begun in each of a series of years should illuminate any trends in the length of Act 312 proceedings.

Table 4 presents data on the total time elapsed between petition and award for cases initiated in 1980, 1981, 1982, and 1983. Data for 1984 cases have been excluded because the great number of unfinished cases makes it unlikely that the statistics have any meaning.

Under the statutory time frame, all Act 312 cases should be completed by the end of the 16th week following petition. In fact, however, only two petitions during the period 1980-1983 were processed to award within that time allotment. Not until about a year following petition (more than three times the statutory timetable) did the system resolve a majority of the cases -- a capacity that apparently remained constant across the four years in question. Thus it seems clear that the Act 312 process can bring the typical case to award within a year of petition, but as currently structured is consistently incapable of meeting the statutory timetable.

Table 4

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		1982		1983	
Weeks	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
16	1	4%	0	0%	0	0%	1	2%
20	1	4%	0	0%	2	5%	2	5%
30	3	11%	2	8%	7	17%	6	14%
40	6	22%	8	32%	15	37%	7	17%
50	14	52%	11	44%	22	54%	19	45%
52	15	56%	13	52%	22	54%	21	50%
60	16	59%	17	68%	24	59%	26	62%
70	20	74%	21	84%	28	68%	29	69%
80	23	85%	22	88%	32	78%	33	79%
over 80	4	15%	3	12%	9	22%	9	21%
Totals	27	100%	25	100%	41	100%	42	100%

SOURCE: Michigan Employment Relations Commission monthly status reports, March 1981 - September 1985. Includes 2 cases in 1982 and 5 cases in 1983 still pending but in process for more than 80 weeks.

It is also clear that many cases take much longer than a year to resolve: Even at the 80th week after petition, a substantial number of cases remained unresolved in each year studied, and the figures for 1982 and 1983 indicate that a larger volume of cases in those years proved to be exceptionally time-consuming for the system to resolve than was true in the two prior years.

The fact that 1980-1981 and 1982-1983 appear to be paired not only in terms of a different frequency of Act 312 cases (as was shown in Table 3, the frequency was substantially higher in the latter years), but also in terms of a different pattern of case disposition, lends some weight to the notion that the 1982-1983 period may have presented more difficult issues for police and fire negotiations than had been present in earlier years.

The length of the Act 312 process is a function of two separate factors: the period from petition date to appointment of an arbitrator by the commission, and the period from the arbitrator's appointment to the rendering of an award. MERC has primary control over the former period; but following appointment of the arbitrator a case assumes an independent existence, with the arbitrator and party delegates having primary control over the timetable.

From Petition to Arbitrator Appointment

Table 5 presents data on the time elapsed between petition filing and arbitrator appointment for Act 312 cases initiated in 1980, 1981, 1982, 1983, and 1984.

Table 5

LENGTH OF TIME ELAPSED BETWEEN PETITION AND ARBITRATOR APPOINTMENT, ACT 312 CASES INITIATED DURING 1980-1984

	Cumulative Number and Percentage of Decisions Reached Within Stated No. of Weeks									
	1980		1981		1982		1983		1984	
Weeks	No.	%	No.	%	No.	%	No.	%	No.	%
3	1	3%	0	0%	4	10%	2	5%	4	11%
5	4	15%	3	12%	9	22%	10	24%	12	33%
10	8	30%	11	44%	22	54%	22	53%	25	69%
15	14	52%	17	68%	28	68%	27	64%	28	78%
over 15	13	48%	8	32%	13	32%	15	36%	8	22%
Totals	27	100%	25	100%	41	100%	42	100%	36	100%

SOURCE: Michigan Employment Relations Commission monthly status reports, March 1981 - September 1985. Data include all cases for which appointment was completed as of June 1985.

Under the statutory time frame, arbitrators should be appointed for all cases by the end of the third week following petition. In facts however, arbitrators were appointed within this limit only 11 times during the 1980-1984 period -- and these "expeditious" appointments were concentrated in the last three of the five years. Yet the data do indicate a substantial improvement in the speed with which appointments are made: Between 1980 and 1984, the percentage of appointments made by the end of 5 weeks more than doubled, to 33; the percentage made by the end of 10 weeks more than doubled, to 69; and the portion made by the end of 15 weeks rose from just over half to almost four-

fifths. During this period the median time from petition to appointment fell from 16 to 8 weeks.

From Arbitrator Appointment to Award

Table 6 presents data on the time elapsed between arbitrator appointment and award for Act 312 cases initiated in 1980, 1981, 1982, and 1983. As in Table 4, data for 1984 cases have been excluded because the great number of unfinished cases makes it unlikely that the statistics have any meaning.

Table 6

LENGTH OF TIME ELAPSED BETVIEEN ARBITRATOR APPOINTMENT AND ANARD, ACT 312 CASES INITIATED DURING 1980-1983

	Cumulative Number and Percentage of Decisions Reached Within Stated No. of Weeks							
	1980		1981		1982		1983	
Weeks	No.	%	No.	%	No.	%	No.	%
14	2	7%	0	0%	3	7%	1	2%
20	6	22%	5	20%	5	12%	5	12%
30	10	37%	8	32%	13	32%	13	31%
40	16	59%	14	56%	20	50%	20	47%
41	16	59%	14	56%	21	53%	21	50%
50	21	78%	20	80%	25	62%	28	67%
60	23	85%	23	92%	31	77%	31	74%
70	23	85%	24	96%	35	87%	35	83%
over 70	4	15%	1	4%	5	13%	7	17%
Totals	27	100%	25	100%	40	100%	42	100%

SOURCE: See Table 4. Includes 1 case in 1982 and 5 cases in 1983 still pending but with arbitrators appointed more than 70 weeks; excludes 1 case pending in 1982 in which the arbitrator had been appointed for less than 70 weeks.

Under the statutory time frame, the arbitration panel should take no more than 14 weeks to complete its work. In fact, however, only 6 cases during the period 1980-1983 were arbitrated in that time allotment. Not until the 41st week did a majority of the arbitration panels conclude their work in each of the four years. It appears that even at 70 weeks after arbitrator appointment, about 15 percent of the cases in a typical group remain unresolved. There is some indication in the data that a greater proportion of cases in 1982 and 1983 required more lengthy arbitration time, since at 40, 50 and 60 weeks a substantially lower portion of cases had been completed in those years. This explains why the total time from petition to award remained stable from 1980 to 1983 (Table 4) even while appointment time was being reduced by several weeks (Table 5). In effect, greater ef-

ficiency in appointments prevented an extension of the average total elapsed time involved in the Act 312 process.

(c) The Cost of Awards and Salary Growth

A third practical concern with Act 312 is that it might result in higher salaries than otherwise would be granted to police and fire employees, inflating the cost of the public safety functions of local governments. This is an important consideration because of the share of local employment and payrolls devoted to police and fire protection, as shown in Table 7.

Table 7

POLICE AND FIRE PERCENTAGES* OF PERSONNEL AND PAYROLLS IN MICHIGAN COUNTIES, CITIES, AND TOWNSHIPS, SELECTED YEARS

	1962	1967	1972	1977	1982
Counties					
Police Personnel	5.1%	6.3%	7.0%	8.3%	9.1%
Police Payroll	5.9%	6.9%	7.8%	9.6%	10.8%
Cities					
Police Personnel	20.4%	21.4%	23.4%	25.4%	25.5%
Police Payroll	23.2%	26.5%	27.2%	29.8%	30.1%
Fire Personnel	11.4%	12.0%	11.5%	10.9%	11.2%
Fire Payroll	12.7%	13.5%	13.3%	12.9%	13.5%
Townships					
Police Personnel	13.4%	15.0%	17.1%	18.1%	21.6%
Police Payroll	16.3%	17.0%	20.0%	22.1%	24.0%
Fire Personnel	18.6%	17.3%	20.0%	15.4%	16.2%
Fire Payroll	18.3%	20.3%	20.2%	18.3%	20.4%

SOURCE: CRC calculations based on **Census of Governments, Compendium of Public Employment.**

***NOTE:** Calculations exclude sewerage and utility functions in order to represent more closely the tax-supported operations of local governments. County police data exclude the corrections function.

The table demonstrates two key trends that are relevant to police and fire costs for Michigan local governments:

-- Police personnel are a large and growing component of Michigan local government employment. The police share of employment has risen in each succeeding Census since 1962 and within cities, townships, and counties alike. By 1982, one in every four city employees, one in every five township employees, and one in every eleven county employees were police personnel as measured in Table 7. Fire protection personnel also constitute a large fraction of city and township (but not county) employment, but their share of total employment has remained more stable over time. Police and fire employees together were more than one-third of 1982 city and township employment as measured In Table 7.

-- Police and fire personnel are highly paid in comparison to the average local government employee in Michigan. Payroll shares have

exceeded employment shares in both functions, among all three types of governmental units, and in each Census since 1962 (with but a single minor exception). Furthermore, the amount of the differential -- particularly within cities -- has grown: In 1962 the city police payroll share was 13.7% larger than the city police employment share (23,2% vs. 20.4%); by 1982 the payroll advantage had grown to 18.0%. Similarly, the fire payroll advantage over employment grew from 11.4% in 1962 to 20.5% in 1982.

Thus it seems clear from the data that police and fire personnel have been both numerous and better-paid than average local-government employees in Michigan for a substantial period of time. The data also suggest that city police and fire compensation has been growing faster for a number of years than that of all other municipal employees taken as a group. The trends in both employment and payroll advantage appear to predate the adoption of Act 312 in 1969.

Detailed data from the Census also make it possible to focus on police and fire personnel and payroll characteristics for Detroit and other large Michigan cities. Table 8 contains data comparing 1982 police and fire employment and payrolls for Detroit, the seven other cities with more than 100,000 residents in 1980, and all other Michigan cities. The data indicate that Detroit and the other large Michigan cities employ larger numbers of police and fire personnel in relation to population and pay them higher wages than do the remaining municipalities in the state. The combination of higher employment levels and higher wage rates leads to a higher cost burden for taxpayers in the larger municipalities.

It is important to note in Table 8 that higher employment levels -- not higher salary levels -- are the predominant source of the extra cost burden for fire protection in all large cities and for police protection in Detroit. For example, the monthly average salary for Detroit police is slightly below other large cities, but the payroll cost per resident is almost twice as high because the number of employees per 10,000 residents is almost twice as high.

Table 8

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 based on **1982 Census of Governments, Compendium of Public Employment,** Table 18. In this source, city populations are from the 1980 **Census of Population;** city employment and payrolls are from October 1982.

It cannot be shown with any precision what a particular group of employees affected by compulsory arbitration would have earned in absence of such arbitration, because the web of cause and effect is too complex to disentangle. It is possible, however, to address more modest questions by comparing salary/wage growth and dispersion for police and fire employees with that of other groups of municipal employees in several cities, both before and after the enactment of Act 312. If it is true that the availability of arbitration has raised police and fire compensation, then the results should be evident in such comparisons

Research Council staff examined compensation data for five types of employee positions in 17 Michigan cities for the years 1960, 1970, and 1985. The employee positions were policeman, firefighters, laborer, beginning clerk-typist, and senior civil engineer; in each position the maximum salary/wage paid by a given city was used, and all pay rates were converted to annual salaries. Compensation data were drawn from the Michigan Municipal League survey of municipal compensation rates, except that telephone checks were made to insure that 1985 data reflected compensation paid on June 30, 1985, in all cases. The cities chosen were all Michigan cities with 1980 population over 25,000 for which substantially complete historical information was available. They were: Allen Park, Ann Arbor, Bay City, Dearborn, Detroit, East Lansing, Flint, Grand Rapids, Holland, Lansing, Livonia, Midland, Muskegon, Pontiac, Saginaw, Warren and Wyandotte. To make comparisons more meaningful, all compensation figures were converted to 1985 dollars using the Detroit CPI-U series.

Table 9 presents the median annual salaries for all five employee positions in the 17 cities and in the three time periods, expressed in 1985 dollars. Pay rates for all five positions improved substantially over the 15 years, rising from 24 to 45 percent in real terms. All five types of municipal employees fared much better in the pre-Act 312 period (1960-1970), when real median compensation rose from 20 to 36

Table 9

MEDIAN MNUAL SALARIES (IN 1985 $) 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.

percent, than they did afterward. Median police pay rose fastest in the pre-Act 312 period; police and fire pay rates clearly outdistanced the other groups in the post-Act 312 period (1970-1985) as well, with the higher growth in fire pay reestablishing general parity between police and fire median salaries.

Tables 10-12 present city-by-city increases in the above-mentioned salaries for the entire period, the pre-Act 312 period, and the post-Act 312 period, respectively. These tables are in effect bar charts that present a rather clear picture of the differentials in salary growth among the selected positions. In all but one city, both police and fire salary growth over the entire period (Table 10) exceeded 30 percent, and these two positions had higher salary increases than the others listed in 11 of the 17 cities. The range of increases from 1960 to 1970 (Table 11) confirms the median advantage enjoyed by police in the pre-Act 312 period, and indicates a lesser advantage for fire pay rates not evident from the median pay data alone: the salary of police rose faster than all others listed in 11 of 17 cities, while fire salary growth exceeded that of all other non-police positions in six cities (as compared with 5 cities for clerical, four for engineer, and one for laborer positions).

The advantage for both police and fire salaries in the post-Act 312 period (Table 12) is more noticeable at the bottom of the distribution of increases than at the top -- substantially fewer reductions in real salary rates than were found among the other positions. The salary of firefighters rose faster than all others listed in 10 cities, 1970-1985, while police salary growth was higher than that of all other non-fire positions in 8 cities.

Table 11

REAL GROWTH IN SALARIES FOR SELECTED POSITIONS IN 17 NICHIGAN CITIES, 1960-1985

(%)Change 1970 Wage Over 1960 Wage in 198S $	Police	Fire	Laborer	Beginning Clerk Typist	Senior Civil Engineer
More Than 60%	Ann Arbor(70) Pontiac (65)				Ann Arbor(66)
46%-60%	Gr Rapids(41) Bay City (52) Flint (43) Holland (47) E Lansing(39) Muskegon (25) Warren (39)	Bay City (59) Ann Arbor(51) Lansing (48) Gr Rapids(48) Warren (46)	Saginaw (46)		Warren (47)
31-45%	Saginaw (45) Dearborn (39) Livonia (38) AllenPark(38) Lansing (37) Wyandotte(32) Midland (36) Detroit (40)	Saginaw (45) Dearborn (43) Flint (43) E Lansing(41) Muskegon (41) Holland (40) Livonia (39) AllenPark(38) Wyandotte(34) Detroit (33) Pontiac (33)	Bay City (45) Ann Arbor(42) E Lansing(42)	Flint (40) Ann Arbor(36) Livonia (36) Saginaw (35) Bay City (32) Holland (31)	Pontiac (34) Gr Rapids(34)
16-30%		Midland (29)	Holland (27) Muskegon (26) Flint (24) Warren (24) Dearborn (21) Lansing (21) Wyandotte(18) AllenPark(17) Midland (16)	Wyandotte(27) Muskegon (26) Detroit (24) Lansing (23) E Lansing(22) Gr Rapids(18) AllenPark(17) Midland (16)	Wyandotte(28) Detroit (22) Dearborn (22) Bay City (22) Saginaw (20) Flint (16)
1-15%			Gr Rapids(14) Detroit (13) Pontiac (9) Livonia (6)	Dearborn (13) Pontiac (13)	
Less Than 1%					Warren (0) Lansing (-3)

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

Table 11

REAL GROWTH IN SALARIES FOR SELECTED POSITIONS IN 17 NICHIGAN CITIES, 1960-1970

(%)Change 1970 Wage Over 1960 Wage in 1985 $	Police	Fire	Laborer	Beginning Clerk Typist	Senior Civil Engineer
More Than 60%					
46%-60%	Ann Arbor(57) Pontiac (52)	Pontiac (50)		Warren (51) Livonia (51)	Flint (55) Pontiac (55)
31-45%	Flint (43) Gr Rapids(41) Detroit (40) Warren (39) Wyandotte(39) E Lansing(39) Dearborn (37) Allen Pk (35) Saginaw (34)	Flint (40) Gr Rapids(40) Ann Arbor(40) Detroit (40) Warren (32) Dearborn (31)	Wyandotte(32) Livonia (31) Ann Arbor(31)	Flint (33)	Ann Arbor(36) Dearborn (31)
16-30%	Lansing (30) Livonia (29) Midland (27) Holland (26) Muskegon (25) Bay City (22)	E Lansing(28) Livonia (26) Saginaw (25) Wyandotte(22) AllenPark(22) Lansing (21) Bay City (20) Holland (20) Midland (18)	E Lansing(29) Pontiac (27) Gr Rapids(25) Dearborn (25) Flint (25) Warren (23) Holland (20) Saginaw (19) Detroit (18)	Ann Arbor(30) Dearborn (28) AllenPark(25) Pontiac (24) Lansing (23) Gr Rapids(22) E Lansing(21) Holland (21) Midland (21) Saginaw (20) Wyandotte(19) Detroit (18) Bay City (17)	Lansing (28) Wyandotte(28) Detroit (25) Midland (20) Holland (20) Gr Rapids(19)
1-15%		Muskegon (15)	Lansing (15) Bay City (15) Midland (14) Muskegon (12) AllenPark(11)	Muskegon (14)	Muskegon (13)
Less Than 1%					Warren (0) Bay City (-4)

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

Table 12

REAL GROWTH IN SALARIES FOR SELECTED POSITIONS IN 17 MICHIGAN CITIES, 1970-1985

(%)Change 1970 Wage Over 1960 Wage in 1985 $	Police	Fire	Laborer	Beginning Clerk Typist	Senior Civil Engineer
More Than 60%					
46%-60%					
31-45%		Bay City (32)			
16-30%	Bay City (24) Muskegon (16) Holland (16)	Muskegon (23) Lansing (22) Holland (16)	Bay City (26) Saginaw (22)		Bay City (27) Ann Arbor(22)
1-15%	Gr Rapids(10) Ann Arbor (9) Saginaw (8) Pontiac (8) Livonia (8) Midland (7) E Lansing (6) Flint (6) Lansing (5) Warren (5) AllenPark(2) Dearborn (1)	Saginaw (15) Allen Pk(13) Warren (11) E Lansing(10) Livonia (10) Wyandotte(10) Dearborn (9) Midland (9) Ann Arbor (8) Gr Rapids (5) Flint (2)	Muskegon (13) E Lansing(10) Ann Arbor (8) AllenPark (5) Holland (5) Lansing (5) Midland (2) Warren (1)	Bay City (13) Saginaw (12) Muskegon (10) Holland (9) Wyandotte(7) Detroit (6) Ann Arbor (5) Flint (5) E Lansing (1)	Gr Rapids(13) E Lansing (5)
Less Than 1%	Wyandotte(-2) Detroit (-4)	Detroit (-4) Pontiac (-11)	Flint (0) Dearborn(-3) Detroit (-3) Gr Rapids(-9) Wyandott(-11) Pontiac(-14) Livonia(-19)	Lansing (-1) Warren (-3) Gr Rapids(-3) Midland (-4) AllenPark(-7) Pontiac (-9) Livonia (-10) Dearborn(-12)	Wyandotte (0) Warren (0) Detroit (-2) Livonia (-4) Dearborn(-7) Saginaw(-10) Pontiac(-13) Lansing(-24) Flint (-25)

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

Table 13 measures the coefficients of dispersion of individual city pay rates from the overall median for each position in each of the three years selected. The dispersion of civil engineer salaries was highest of the five positions for all three years, at around 10 percent of the median. The other four positions showed dispersions in the range of 5-7 percent in 1960, rising to 78 percent in 1970; but in 1985 salary dispersion for both police and fire positions was less than 5 percent, while that for both laborer and clerical positions was around 8 percent. There was less variability among police and fire pay rates after the availability of arbitration than was present before -- a trend not found within the other positions.

Table 13

DISPERSION OF ANNUAL SALARIES ABOUT THE MEDIUM, EXPRESSED AS A PERCENT OF THE NEDIM SALARY

	COEFFICIENTS OF DISPERSION OF SALARIES IN 17 CITIES FROM MEDIM IN:		
POSITION	**1960**	**1970**	**1985**
CIVIL ENGR	9.5%	10.6%	10.1%
POLICE	5.6%	7.4%	4.3%
FIREFIGHTER	5.4%	7.7%	4.7%
LABORER	5.8%	6.9%	8.2%
CLERK-TYPIST	6.5%	8.1%	7.5%

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

The salary data for the 17 cities are consistent with Census data presented earlier (Table 7) in suggesting that police and fire pay have been rising faster than other employees' pay since the early 1960s. The advantage in pay growth apparently preceded Act 312. On the other hand, the relative performance of police and fire pay growth in these cities improved after arbitration became available: median salary growth rates for police and fire positions were substantially larger than those of other positions. In most cities police and fire positions were spared the loss in real pay value common to other positions, and salary increases were more consistent among all cities analyzed. Thus, while Act 312 may not be responsible for the general tendency for police and fire employees to fare better than other municipal workers in terms of salary increases, the availability of arbitration might have added to the comparative advantage already enjoyed by police and firefighters.

Some caution is warranted in assigning a specific value to this additional advantage, because a great many factors affect municipal pay rates. For example, some diversity in the findings emerges when the data are divided into regional groupings of cities.

Table 14 presents real median salaries for police, laborers, and beginning clerk-typists in five geographical city groupings -- (1) Grand Rapids, Holland, Muskegon ("GR-H-M"); (2) Lansing, East Lansing ("L-EL"); (3) Detroit, Dearborn, Livonia, Warren, Wyandotte, Allen Park ("Det Area"); (4) Ann Arbor, Flint, Pontiac ("AA-F-P"); (5) Bay City, Midland, Saginaw ("BC-M-S"). Real median clerical salaries were higher in 1985 than in 1970 in four of the five groups, even though

the overall median for all 17 cities was lower; and median laborer salary growth actually exceeded median police salary growth from 1970 to 1985 in two of the five groups (BC-M-S and L-EL). These regional variations are only suggestive, but they raise the possibility that more thorough study of substate patterns would find that salary growth in some areas varies from overall state trends.

Table 14

MEDIUM ANNUAL SALARIES (IN 1985 $) FOR THREE EMPLOYEE POSITIONS IN FIVE REGIONAL CITY GROUPINGS - 1960, 1970, AND 1985

REGION	1960 MEDIAN	1970 MEDIAN	% INCREASE OVER 1970	1985 MEDIAN	% INCREASE OVER 1970	% INCREASE OVER 1960
POLICE						
17 CITIES	**$18,680**	**$25,422**	**36%**	**$27,166**	**7%**	**45%**
GR-H-M	16,838	21,953	30	25,521	16	52
L-EL	18,120	24,322	34	25,597	5	41
Det Area	19,895	27,078	36	27,483	1	38
AA-F-P	17,869	27,177	52	29,425	8	65
BC-M-S	18,282	24,417	34	26,499	9	45
LABORER						
17 CITIES	**$15,223**	**$18,330**	**20%**	**$18,866**	**3%**	**24%**
GR-H-M	13,509	16,354	21	16,390	0	21
L-EL	14,689	17,863	22	19,146	7	30
Det Area	15,756	19,811	26	18,746	-5	19
AA-F-P	15,223	19,319	27	18,295	-5	20
BC-M-S	l4,653	17,451	19	20,675	18	41
CLERK-TYPIST						
17 CITIES	**$12,485**	**$16,135**	**29%**	**$15,558**	**-4%**	**25%**
GR-H-M	11,079	13,377	21	14,149	6	28
L-EL	12,876	15,733	22	15,802	0	23
Det Area	13,106	17,010	30	16,657	-2	27
AA-F-P	12,598	16,327	30	17,164	5	36
BC-M-S	12,485	14,644	17	15,268	4	22

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

A finding that the impact of arbitration availability differs within various areas of the state would not be inconsistent with the conclusions of a recent study which attempted to quantify the impact of arbitration nationwide. That study found that the availability of arbitration in a given state is associated with higher police salaries and fringe benefits in the state generally, but found the results less clear as to whether arbitration actually caused the differentials. The actual use of arbitration in a given city was not found to be a significant salary factor. The report concludes:

> Substantively, our findings indicate that arbitration's impact varies considerably across states.... [C]ities in only a few states paid significantly higher salaries, fringes, or

total compensation after arbitration's arrival than they did beforehand. In most arbitration states, the salary, fringes and compensation patterns which existed before arbitration's arrival seemed to continue after arbitration became available. In turn, the modest impact of arbitration in most states indicates that over time collective bargaining may have done more to push up the components of police pay than arbitration has done. In addition, the variation in salary, fringe, and compensation levels across states indicates that police pay is heavily influenced by unmeasured state characteristics which have little or nothing to do with bargaining or arbitration.*

(d) Balance in Arbitration Awards

Table 15 summarizes the distribution of issues resolved in Act 312 awards for years 1982 through 1984.

Table 15

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

	1982			1983			1984		
ISSUE	**EMPL.**	**UN.**	**TOTAL**	**EMPL.**	**UN.**	**TOTAL**	**EMPL.**	**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
Cost Of Living	4	0	4	8	3	11	5	7	12
Personal/Sick Leave	2	1	3	9	9	18	8	12	20
Vacation/Holidays	10	1	11	15	6	21	10	4	14
Uniform Allowance	5	9	14	2	7	9	10	8	18
Other Economic Issues	8	10	18	16	4	20	5	11	16
All Economic Issues	70	44	114	115	92	207	109	85	194
Non-economic Issues	1	4	5	6	8	14	18	30	48
Total Issues	71	48	119	121	100	221	177	115	749
Awards Included			22			37			46
Average # Issues Per Award			5.4			6.0			5.3

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.

Employers won 52% of wage issues in 1982, 57% in 1983, and 55% in 1984. Employers also prevailed on a substantial percentage of issues dealing with fringe benefits and retirement. Employers won 61% of all economic issues in 1982, 56% in 1983, and 56% in 1984, while unions

* Feuille, Hendricks and Delaney; **The Impact of Collective Bargaining And Interest Arbitration On Policing** (University of Illinois, 1983), page **160.**

fared much better on non-economic issues. While a mere tabulation of issues is not indicative of costs underlying a particular award, the 3-year win-loss distribution indicates that the awards have been relatively balanced in terms of numbers.

(e) Distribution of Cases among Arbitrators

The permanent panel of arbitrators maintained by MERC consists of approximately 140 individuals. The commission's responsibility to select a list of three names from the permanent panel of arbitrators was delegated by commission resolution 105 to the commissioners individually. Petitions are assigned to individual commissioners on a rotating basis. Assuming stability on the panel, less than half the panel members took part in the cases that have been decided since March 1981 or were still pending as of June 1985. The distribution of cases among these 69 arbitrators varied widely, as seen in Table 16. One arbitrator handled 8 cases, while two other arbitrators were involved in 7 cases each. On the other hand, 24 arbitrators were involved in only one case each. Sixteen of the 69 arbitrators, or 23% of them, handled just under half the total cases involved. These 16 represent less than 12% of the 140-member panel.

Table 16

CASE DISTRIBUTION AMONG ARBITRATORS, 1981-1985

Number of Cases Handled By a Single Arbitrator	Arbitrators		Cases Accounted For:		
	No.	Cumulative No.	No.	Cumulative No.	Cumulative %
8	1	1	8	8	4.2
7	2	3	14	22	11.9
6	3	6	18	40	21.6
5	6	12	30	70	37.8
4	4	16	16	86	46.5
3	17	33	51	137	74.1
2	12	45	24	161	87.0
1	24	69	26	185	100.0

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

(f) Strike Activity since Adoption of Act 312

Despite the fact that strikes by public employees in the state are illegal, 575 work stoppages have occurred since 1969. The bulk of these stoppages have involved school districts. Strikes involving school districts ranged from 40% of public sector work stoppages in 1976 to 95% in 1982 and averaged 74% of the total. Work stoppages involving school districts, colleges, and universities accounted for approximately 82% of all public sector work stoppages during the period. Only one police strike was recorded, and no-firefighter strikes.

Table 17

PUBLIC SECTOR STRIKE ACTIVITY IN MICHIGAN SINCE ACT 312

	Police	Fire	School Districts	Colleges and Universities	All Others	Total
1970	1	0	26	6	11	44
1971	0	0	11	3	5	19
1972	0	0	18	2	2	22
1973	0	0	56	4	5	65
1974	0	0	27	2	16	45
1975	0	0	9	3	8	20
1976	0	0	8	4	8	20
1977	0	0	16	2	11	29
1978	0	0	35	4	6	45
1979	0	0	72	5	10	87
1980	0	0	48	3	10	61
1981	0	0	12	2	5	19
1982	0	0	23	0	1	24
1983	0	0	43	1	2	46
1984	0	0	14	4	1	19
1985*	0	0	7	2	1	10
Total	1	0	425	47	102	575

SOURCE: Michigan Employment Relations Commission Bi-Weekly Work Stoppage Reports. *Through October 4, 1985.

Note: The police strike listed in 1970 involved the City of Battle Creek and the Battle Creek Police Officers Association and lasted approximately two and one-half weeks. The strike by police in Marquette, which has been referred to in several academic works as the "only significant strike" involving police or fire employees since passage of Act 312, does not appear in commission work stoppage records.

3. 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 governments 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 on two occasions has 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.

Did the Provisions of Act 312 Unconstitutionally Divest Home Rule Units of Government of Their Authority?

Section 22 of article 7 of the state constitution grants certain powers of home rule to cities and villages, subject, however, "to the constitution and law." As the state supreme court pointed out in the **Dearborn Firefighters** case, the same constitution from which home rule powers derive, also by section 48 of article 4 authorizes the legislature to "enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service." Later in its opinion, the court stated that "The constitutional and statutory powers of a home-rule city to establish the conditions of public employment are subject to the powers of the legislature."

Did Act 312 Result in the Surrender of the Power of Taxation?

Section 2 of article 9 of the state constitution provides that "The power of taxation shall never be surrendered, suspended or contracted away." The issue was raised in the **Dearborn** case that an arbitrator was in effect given the power to raise taxes. State courts have held, however, that an Act 312 award does not necessarily contemplate an increase in taxes. The **Dearborn** court concluded that this was so because

> [t]he orders [issued by an arbitration panel] can be read as contemplating either an increase in taxes or a decrease in other municipal expenditures. Be that as it may, implicit in the power conferred by the Constitution on the Legislature to 'resolve' disputes concerning public employees is legislative power to require, if need be, a public employer to provide the necessary funds subject to constitutional limitations, e.g. the 15-mill limitation.

The result of an arbitration award is to create a new employment contract. A municipality can fund such a contract either by increasing taxes, subject to applicable limitations contained in the state constitution, charter, or general law, or by curtailing other services. Where a municipality is already taxing at the maximum rate permitted, the only responsible course of conduct is to cut its budget to the extent necessary to fund the award. This reasoning was implicit in the **Dearborn** court's conclusion that arbitrators were not given the power to tax. The court apparently did not contemplate, however, that a municipality might refuse to pay an arbitration award.

The failure of a municipality to abide by the terms of an arbitration award can constitute a breach of contract, which would permit the union involved to have a judgment rendered against the municipality for the amount owing on the award. An arbitration award reduced to Judgment presents a special problem because Judgments, under current law, can be translated into tax levies that in some cases have exceeded constitutional taxing limitations and have avoided constitutionally guaranteed voter approval. While "a judgment for the recovery of money has been described as a debt, or a form of indebtedness, or evidence of indebtedness..." (46 Am Jur2d, Judgments, section 232), the

precise issue of the extent to which a judgment arising out of an arbitration award is subject to constitutional limitations respecting taxes and debt has not been fully adjudicated in Michigan.

Did Act 312 Effect an Unconstitutional Delegation of Legislative Power?

Two of the justices in the **Dearborn** case would have so held, although not because of any doubt about the general authority of the legislature to delegate when properly provided for. As the court pointed out with respect to the resolution of public employee disputes, "clearly it was not intended that the Legislature itself decide each and every dispute."

There were, however, two concerns. At the time of the decision, the delegates of each party to the dispute selected a third individual from the community at large to act as neutral chairman. The state became involved in the appointment of an arbitrator only to the extent that the parties themselves could not agree on selection of a chairman. Secondly, the tenure of the arbitrator lasted only so long as the proceeding over which he presided.

As a result of the method of appointment and lack of tenure of arbitrators, two justices concluded that the "decision-making power has been dispersed through so many individual, independent arbitrators that it is not possible to hold any public official or authority responsible for the manner in which the delegated power has been exercised."

Both concerns were addressed, by a 1976 amendment, to the satisfaction of a majority of the court by the time it decided the **Detroit Police Officers Association** case in 1980. The 1976 amendment required MERC to create and maintain a permanent panel of arbitrators, and selection of arbitrators is limited to individuals who are members of that panel. The reasoning was that since the governor appoints the three members of the commission, with the advice and consent of the senate, and the commissioners have responsibility to maintain the permanent panel, there was established a line of accountability.

4. Major Findings

Several findings have been presented in Part II of this paper. The major ones are:

(1) The resort to arbitration to resolve disputes is uneven among municipalities of the state. Thirty-six local units of government have accounted for half of all cases. It can be said that heavy use of arbitration to settle police and fire contracts is principally a metropolitan Detroit and large-unit phenomenon - although both smaller and outstate units of government also are involved to a lesser extent.

(2) It is not clear that the aggregate frequency of resort to Act 312 to resolve police and fire employment contracts in Michigan local governments has been growing. In 1980 and 1981, and again in 1984, Act 312 cases resolved less than 8 percent of all police and fire negotiations; but the rate was substantially higher in 1982 and 1983.

(3) Despite specific time provisions in the statute, the arbitration process takes longer than the law contemplates. The time to appoint

an arbitrator has improved greatly since 1980, but the 8-week median in 1984 still was well beyond the statutory limit. Arbitration panels actually took longer to complete their work in 1982 and 1983 than they had in the two prior years. Overall, the typical arbitration case required about a year to complete in each of the four years 1980-1983.

(4) Detroit and other large Michigan cities employed in 1982 larger numbers of police and fire personnel in relation to population and paid them higher wages than did the remaining municipalities in the state, creating a higher cost burden for taxpayers in the larger municipalities. Higher employment levels -- not higher salary levels -- were the predominant source of the extra cost burden for fire protection in large cities as a whole and for police protection in Detroit.

(5) Police and fire employees constituted about 37% of tax-supported city and township personnel in 1982 and about 44% of the associated payrolls in that same year. This payroll advantage can be traced back to at least 1962. Payroll and employment data also suggest that city police and fire compensation has been growing faster for a number of years, both before and since arbitration, than that of all other municipal employees taken as a group.

(6) Actual salary data also indicate that the advantage with respect to pay growth enjoyed by police and fire personnel over other municipal employees preceded Act 312. The salary for police rose faster from 1960 to 1970 than four other positions studied in 1’1 of 17 cities examined, while fire salary growth exceeded that of all other non-police positions in six cities. On the other hand, the relative performance of police and fire pay growth improved after arbitration became available: median salary growth rates for police and fire positions from 1970 to 1985 were substantially larger than those of other positions. In most cities police and fire positions were spared the loss in real pay value common to other positions, and their salary increases were more consistent among all cities analyzed.

(7) The win-loss distribution on issues brought to arbitration by employers and unions from 1982 to 1984 was relatively balanced. Employers won a majority of wage issues in all 3 years, and also prevailed on a substantial percentage of issues dealing with fringe benefits, retirement, and other economic issues. Unions fared much better on non-economic issues.

(8) Less than half the number of arbitrators who comprise the permanent panel took part in those cases decided since March 1981 or still pending as of June 1985. The distribution of cases among the 69 arbitrators involved varied widely. Sixteen of the 69 (23%) handled just under half the total cases.

(9) There have been 575 work stoppages by public employees in the state since 1969. Strikes involving school districts were 74% of the total. Only one police strike was recorded, and no firefighter strikes.

(10) Whatever deficiencies may be said to exist in the arbitration process, state courts have held those deficiencies are not of constitutional dimension.

Part III

CONCEPTUAL ALTERNATIVES

1. General Observations

There exist a number of alternative approaches to the Michigan compulsory arbitration procedure. One alternative not unworthy of note would be to have no compulsory arbitration at all. This could be done while continuing the prohibition against strikes, or coupled with the removal of such prohibition. That Act 312 is constitutional, as state courts have held, does not mean it is the most appropriate or prudent approach to local government labor relations and fiscal and budgetary matters. A salient argument can be advanced that the line of authority to an arbitrator from the employment relations commission by whom he or she is appointed and from the governor by whom the commissioners are appointed is too attenuated to permit genuine accountability to the public. It is highly unlikely, for example, that the citizens of a community would be so incensed at what they considered to be an unfair arbitration award as to seek to vote a governor out of office, or that a single community impacted by an arbitration award could achieve that result.

The alternative at the other extreme would be to extend whatever compulsory arbitration procedure was adopted to public employees generally. Act 312 is an alternative to the strike which is prohibited by law. But the legal prohibition against strikes extends to all public employees, not just police and firefighters. Conceptually speaking, there is no justification for providing an alternative procedure only for police and firefighters except the tacit recognition that strikes by other public employees are more tolerable. There is, however, no constitutional dictate which prohibits the legislature from according different treatment to similarity situated public employee groups, provided a legitimate governmental interest is advanced. The data presented in Table 17 indicate that if strikes by other public sector employees are not more tolerable, they are nonetheless more prevalent.

The empirical data presented in **Part II** above, and conclusions which may be drawn therefrom, do not give preference to one alternative over another. Alternatives serve as an indication of choice and choice is a matter of public policy. It may be presumed that by enacting Act 312 in 1969, the legislature implicitly rejected the alternative of no compulsory arbitration as it did the alternative of extending compulsory arbitration to all public employees generally. But between the two conceptual extremes rejected by the legislature exist a number of less extreme alternatives. That the legislature has not explicitly rejected such other alternatives is evidenced by its willingness to amend the statute several times since 1969 in order, to fine-tune the procedure while leaving the basic structure intact.

2. Modifications to the Act 312 Process

In viewing improvements to the present procedure, attention is most profitably focused on two concerns: the identification of those changes most suited to bringing about improvements and the order in which those improvements ought to be considered. It should invite no controversy to conclude that those improvements which may be implemented most readily and with the least effort should be addressed

first. The most appropriate order of treatment is an examination of (a) those modifications which will result in improvements in the collection and maintenance of data by the commission and its staff; (b) secondly, modifications which will focus on the quality and performance of arbitrators; (c) thirdly, modifications which will result in improvements in the management of cases; and (d) finally, modifications which will result in improvements in the content of awards.

(a) Improvements in Collection and Maintenance of Data

The lack of adequate information by which to judge performance under Act 312 has not heretofore been dealt with as a separate problem area, but it has a bearing on any discussion concerning improvements. MERC is the state agency charged with the administration of Act 312. Commission staff are presently unable, however, to collect and maintain the types of data necessary to permit a reasoned evaluation of the arbitration statute's performance. At present, no individual is assigned to devote attention full-time to the administration of Act 312. In preparing this analysis, for example, Research Council staff had to cull data from a variety of different sources. Those sources included: the City of Detroit; the Michigan Employment Relations Commission; the Labor and Industrial Relations Library at Michigan State University; the Michigan Municipal League; and the Police Officers Association of Michigan.

The responsibilities added to the commission's purview in 1969 by Act 312 were unaccompanied by any complements to staff. The Labor Mediation Board was created in 1939, the name being changed to the Michigan Employment Relations Commission in 1976. Prior to the enactment of Act 312, the Labor Mediation Board (MERC) had substantial existing statutory responsibilities under the Labor Mediation Act (Public Act 176 of 1939) and the Hutchinson Act (Public Act 336 of 1947, as amended by Public Act 379 of 1965 and now known as the Public Employment Relations Act). These responsibilities included or include mediation of labor disputes and the authority to determine bargaining unit composition and unfair labor practices in the public and private sectors.

Improvements in collection and maintenance of data could be effected without substantial additions to staff.

(1) At minimum, one full-time clerical or data processing position would permit the computerization of data presently contained in typewritten Act 312 monthly summaries. A straightforward computer spreadsheet, such as that developed by Research Council staff in analyzing case-length data for this report, would facilitate the tracking of cases and compilation of other data.

(2) It might be helpful to complement such a clerical or data position with one responsible for analyzing such data on a periodic basis and following-up with arbitrators on the progress of cases. Additional areas of responsibility might include the preparation of such reports as the commission would require, covering such areas as the length of cases grouped by the unit of government involved, the arbitrator involved, the year of petition or award, or any other categorization most conducive to gauging performance.

(3) The commission could consider a requirement that all awards be published and made available to the public in sequential volumes in the same manner as many judicial opinions. Such ready access to awards would afford interested parties and the public in general more familiarity with the arbitration process and permit them to evaluate the quality of the reasoning and conclusions contained in decisions. In conjunction with this requirement, the commission might consider requiring the parties to defray the expense of such publication. The commission could make all such awards available to the general public.

(4) The state, as the scope and content of the MERC data base increased, could consider the creation of a modest central staff which could assist arbitrators in analyzing the various proposals put forth by parties to an arbitration proceeding, particularly with respect to the cost of last best offers on economic issues. A number of state and federal agencies (e.g. the state Public Service Commission, the National Labor Relations Board) have central staffs, one purpose of which is to develop information and provide technical assistance to aid the agency in discharging its delegated duties.

(b) Focusing on the Quality and Performance of Arbitrators

The Michigan arbitration statute requires that arbitrators be "impartial, competent, and reputable," but does not require that arbitrators have a particular type or level of education or experience. Informed opinion suggests that the quality of arbitrators on the commission's permanent panel varies considerably.

The quality, impartiality, and competence of arbitrators is vital to the integrity of the procedure and to its acceptance by the parties involved and by the public. The parties themselves can, to an extent, adjust for perceived deficiencies by striking one name from a list of three provided when the process is invoked, and the fact that one-half of the arbitrators on the permanent panel took no part in cases examined by this study (see Table 16) indicates this may be occurring. This process of natural adjustment is not an adequate safeguard, however, because each party is permitted to strike only one name.

The commission also can alleviate certain problems through its assignment of 3-name lists from the panel. These problems include geography (not assigning an arbitrator who lives in the Upper Peninsula, for example, to hear a case in southeastern lower Michigan because of the travel distance), availability (a number of arbitrators have private professional obligations which do not always permit them to accept a case promptly), and expertise (not all members of the permanent panel are equally conversant in the area of collective bargaining and labor law). The commission's responsibility to select a list of three names from the permanent panel of arbitrators was delegated by commission resolution 105 to the commissioners individually. Even with its power to select names for a particular case, however, the commission is limited by the overall quality of the permanent panel.

The absence from the statute of specific qualifications is excusable on either of two grounds. First, when Michigan adopted its arbitration statute in 1969, there was little other state experience to offer a guide as to what qualifications a state arbitrator should have. It is true, however, that the legislature had the opportunity to place specific qualifications in the statute when in 1976 it amended section

5 to require the commission to establish and appoint a permanent panel. Secondly, it is a not-uncommon legislative practice to delegate authority to an administrative agency with the expectation that the agency will adopt administrative rules to fill procedural gaps as experience reveals a need. The commission has declined to adopt administrative rules governing any aspect of Act 312. It could move in one of three directions to strengthen the panel.

(1) The commission could adopt administrative rules setting out the education or equivalent experience criteria that it considers necessary to justify appointment of individuals to the permanent panel and the criteria by which individuals once appointed, are permitted to remain.

(2) The commission could consider improving the existing pool of individuals by requiring in-service training for members of the panel who have little prior arbitration experience. Commission staff has experimented with such training, but its training program may need to be strengthened by commission policy.

(3) The commission could consider monitoring arbitration cases and evaluating their procedural aspects as well as the completeness of arbitrator awards. Such "audits" could be conducted by a central staff such as that suggested in (a)(4), above. The commission might ultimately consider the removal of any individual from the permanent panel whose performance was unsatisfactory from a procedural perspective. The commission would be greatly assisted in this regard by the statute, which permits the commission to "remove existing members [of the permanent panel] without cause."

(c) Improvements in the Management of Cases

For a method of dispute resolution to be effective, it must possess two characteristics: a means by which to preserve the orderliness of the decision-making process and, secondly, some manner of enforcing decisions once made. The latter characteristic is not only provided for in the statute, but functions quite well in practice. The fact that a prevailing party may seek judicial enforcement of an award, and that a dissatisfied party may seek appellate review of an award, both tend to ensure enforceability. The former characteristic -- that of orderliness of the process -- exists in the statute in the form of a sequential timetable. As already demonstrated, however, the length of the average arbitration case is so far beyond what the statute contemplates that it is clear the goal of "expeditious" dispute resolution has not been attained. The key question is how to eliminate the disparity. There are two broad options:

Hold the Arbitrator Accountable. One approach is to hold the arbitrator accountable for expeditious management of the proceeding. Even though in theory either party can withhold consent to waive a time limitation, it is generally acknowledged that practical concerns about having to maintain a cordial working relationship with the arbitrator make withholding of, consent unwise. Currently the arbitrator has almost complete freedom in scheduling and in allowing waiver of time limits. This freedom could be curbed by the commission. Restricting the grounds for waiver might eliminate unnecessary delay and improve the timeliness of arbitration decisions.

(1) The commission could consider adopting an administrative rule requiring arbitrators to make periodic reports apprising the commission of progress in all pending cases and justifying any waivers from statutory time limits. This would leave the initiative in granting waivers with the arbitrator and could be an adjunct to the "audit" function suggested in (b)(3), above.

(2) The commission could take more direct control over scheduling by adopting an administrative rule that would prohibit an arbitrator from granting a waiver of time limits except with explicit commission approval. Since the statutory time limits are almost universally violated, there is a good possibility that they are, in fact, too stringent; the commission might therefore want to apply any such waiver-approval requirement only to delays that are considered excessive, rather than to all violations of statutory deadlines.

(3) The commission might seek the establishment of statutory time limits that more closely approximate actual practice, and then apply restrictions to the granting of waivers beyond such new limits.

Create Incentives for Parties to Settle. Focusing the pressure for improving case length on arbitrators can be criticized as being inappropriate. An arbitration case comes about because two parties cannot agree on an employment contract, and an arbitrator is simply hired to create an agreement in such circumstances. It may be that such cases might be shortened more effectively and occur less frequently if the pressure were instead placed on the parties to the dispute to settle their differences. In this regard, it is important to bear in mind two related considerations. The first is that a purpose of Act 312 is to offer an alternative to the strike. Secondly, arbitration seeks to induce the parties to reach voluntary agreement by posing as an unattractive consequence of disagreement. It seems reasonable then to require that binding arbitration should, to the extent possible, impose on the parties the same risks, costs, and inconveniences as would a strike, and to favor those features which render arbitration unattractive over those permitting ready access.

(4) The commission could adopt an administrative rule or seek legislation requiring that last best offers be submitted at the time arbitration is requested, or at some early time in the arbitration process. Section 8 of the statute now reads in pertinent part:

> At or before the conclusion of the hearing held pursuant to section 6 the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue.

If this language merely establishes an outer boundary by which time last offers must be submitted, a commission rule might further specify the time of filing; otherwise statutory change would by needed. Because the statute makes mediation a condition precedent to arbitration, the last best offers could be certified for arbitration by the mediator assigned to a particular case. Advancing the presentation of last offers should speed case disposition by limiting the matters coming before the arbitration panel to a specific set of issues.

Two major arguments can be advanced against such a proposal. The first is that the parties might not reasonably know their final positions by the time arbitration is requested. Such an argument implicitly assumes that the initiation of arbitration constitutes the first meaningful communication between the parties. This may in fact be the case in some instances, but on the other hand current law requires good-faith bargaining by the parties before mediation and 30 days of mediation prior to arbitration, which should permit each party to obtain a realistic view of the other's position on the issues in dispute.

Secondly, it can be argued that to require last best offers to be submitted "up-front" would create inflexibility in the arbitration process. Under the present process, an arbitrator can mediate with the parties in an attempt to move them toward voluntary agreement or at least insure the likelihood that the offers finally submitted will be reasonable. Certainly it may be said that a voluntary agreement is preferable to one imposed by arbitration, but it can also be argued that mediation and arbitration are not one and the same. They are supposed to be distinct phases in the process of labor dispute resolution. The commission has a separate staff of mediators who attempt to mediate a voluntary settlement before arbitration is invoked. The proper role of the arbitrator is not to mediate, but rather to decide, even though the parties retain the right to reach agreement on their own. Requiring the submission of last best offers with the request for arbitration would in no manner impair an arbitrator's ability to perform his or her proper role.

(5) The commission could seek statutory authorization to place a numeric limitation on issues that could be submitted to arbitration. Apparently the commission has in some instances refused to act on petitions requesting arbitration where an inordinately large number of issues remained unresolved, but it has done so without color of statutory authority and has been inconsistent in applying such a limit. For example, the commission did approve the 1983 petition involving the City of Detroit and the Detroit Police Officers Association, despite the fact that the parties submitted over one hundred issues. It would be advisable that any such amendatory language contain a definition of what constitutes a single issue, or that the commission be empowered to determine what constitutes a single issue, so as to prevent parties from aggregating issues in order to circumvent such a limitation.

(6) The commission could seek the implementation of amendatory language to require that the choice among last best offers be by total package. This requirement, to a great extent, would have the same effect as limiting the number of issues which could be submitted, but would avoid the troublesome difficulty of defining what constitutes a single issue. Where the choice of last best offers is by total package, the parties themselves limit the number of issues submitted because each additional issue may risk rejection of the entire package of which it is a part. Such a feature would doubtless render arbitration in Michigan a less attractive alternative to voluntary settlement.

There are two major objections to the total-package feature. The first is that the arbitration system would be rendered inflexible. This objection, whether raised against requiring last best offers to be made "up-front" or choice among these offers to be by total-package, is grounded in philosophy rather than practicability. There is nothing inherent in the arbitration process which precludes total-

package, last-offer selection from working. The state of Wisconsin has had such a feature for years and consideration was given by the Michigan Senate to the adoption of such a feature in 1972. The objection concerns whether and to what extent an arbitrator's discretion should be circumscribed. The crux of the issue is whether the arbitrators role is to fashion his or her own resolution to a dispute (conventional), is to be limited to a selection on an economic issue-by-issue basis (as is currently done in Michigan), or is to be limited to a selection of one of the package proposals the parties themselves determine to be their last offers.

The second objection is that a total-package, last-offer feature requires substantial sophistication or experience on the part of the parties involved. Unless each party has an adequate understanding of both the statutory criteria used to judge each package and an arbitrators use of such criteria, one party may unwittingly put forth a last offer without ever comprehending that a component of it would be viewed as unreasonable. Should the parties reach voluntary agreement without invoking arbitration, then of course no such risk would be undertaken.

(7) The commission could seek the implementation of amendatory language to require employers to pay interest on awards. The statute does not now provide for interest and the state supreme court has held that no such provision can be implied. Interest on awards could serve the dual purposes of encouraging municipalities to quicken the pace of the process and to compensate employees whose wages would not have increased during the pendency of the arbitration proceeding.

The proposal to require interest finds support in the fact that there is a present value of money. A municipality benefits from delay in a manner not available to a union. A municipality involved in a two-year proceeding, for example, could at the outset bank the money involved, while enjoying the use of that money and the interest earned thereon. When the award issued at the end of two years, the cost to the municipality would have been reduced by the effects of inflation.

Two factors offset the attractiveness of requiring interest to be paid. First, the fact that last offers do not have to be made until the end of the process should permit a union to adjust for the value of money lost over the course of a long proceeding by upwardly adjusting its final offer. Secondly, there is a conceptual difficulty with requiring a municipality to pay interest. It is based on the implicit assumption that the obligation of the municipality accrues at some point prior to the award being rendered. A salient argument can be advanced that until an award is actually rendered, the effect of which is to create a new contract, a municipality's obligation, is fulfilled by meeting the terms of the existing contract, including the terms governing wages.

(8) The commission could seek the implementation of amendatory language to place in the statute features of self-enforcement. The statute is presently devoid of any sanctions to be imposed for the violation of prescribed time limits. The commission could be empowered in its discretion, or be required, to impose costs upon the parties for any delays not reasonably justified.

The statute, for example, requires that each party and the state pay one-third of an arbitrator's compensation. A plausible contention may

be advanced that the state should not be required to pay its one-third share beyond the period of time contemplated by the statute for the resolution of such a dispute. Requiring each party to pay one-half of an arbitrator's compensation should proceedings extend a certain number of days would of course have a varying impact depending upon the financial resources of the parties involved.

(d) Improvements in the Content of Awards

The ultimate end to which the above-mentioned options are directed is a fair and rational procedure for the resolution of public sector labor disputes. Two reflections of the extent to which this end is achieved are the quality of the written awards and their acceptance by the parties and the public. The written award represents the tangible result of the arbitration process.

At present, awards bear no consistent format or content. On occasion an award may not indicate precisely what issues were in dispute, their ultimate disposition by the panel, or the effective date of the provisions. Because the written award is in effect a contractual document that governs the relations of the parties during its specified term, it is imperative that the award clearly apprise the parties of their respective rights and obligations. It is likewise important that the award clearly state the disposition of each issue which was in dispute. The written award also is the logical place to document the significant procedural details of each case.

(1) The commission could consider a requirement that each award contain minimum information such as the following: (i) the date the petition was filed and the party who filed it; (ii) the names of the parties involved and the names of the delegates chosen to represent them; (iii) the date of the arbitrators appointment; (iv) a summary listing of all issues in dispute, whether economic or non-economic, an indication of the parties who submitted them, and the parties' respective positions on them; (v) the number and date of all hearings, including the pre-hearing conference; (vi) the disposition, including any stipulations, of all issues which were in dispute; (vii) a section set aside expressly for permitting either delegate dissenting on any issue to express his or her objections; (viii) the effective date of the award and the effective date of any of its provisions if different therefrom.

The cost of an arbitration award is of substantial importance to the general public, which must pay for the contract awarded, -as well as to municipal management, which must by law adopt a balanced budget each year. To the extent that the cost of an award issued by an arbitration panel exceeds the last offer of the employer, that additional cost can be met only through an alteration of budgetary priorities, an increase in taxes, or some combination thereof. Because an arbitration award can be crucial to the fiscal future and overall service levels of a municipality, it is reasonable to expect that the decision should lay out in clear terms the factual basis upon which the panel evaluated the costs of each issue in the award and how the cost of the total award affected the municipality's ability to pay for necessary services.

(2) The commission could consider a requirement that awards state the cost of each economic issue selected, each non-economic issue selected

or arrived at, the total cost of the package adopted by the arbitration panel, and the impact of these costs on the municipality's ability to pay for necessary services. Such a requirement finds support in the statutory criterion contained in the act directing consideration to "the interests and welfare of the public and the financial ability of the unit of government to meet those costs."

(3) To provide some consistency in the evaluation of costs, the commission could develop a methodology for the costing of issues that generally comprise arbitration proposals -- such as wages, pension provisions, and fringe benefits. This might be one of the duties of a central staff such as that suggested in (a)(4), above.

APPENDIX A

LOCAL GOVERNMENT INVOLVEMENT IN ACT 312 ARBITRATION DECISIONS

ALGONAC	1
ALLEGAN COUNTY	2
ALLEN PARK	2
ALPENA	5
ALPENA COUNTY	1
ANN ARBOR	6
BANGOR	1
BARRY COUNTY	2
BATTLE CREEK	2
BAY CITY	4
BAY COUNTY	2
BELDING	2
BENTON HARBOR	5
BENTON TOWNSHIP	2
BENZIE COUNTY	2
BERRIEN COUNTY	1
BEVERLY HILLS	2
BIG RAPIDS	3
BIRMINGHAM	6
BLACKMAN TOWNSHIP	2
BLOOMFIELD HILLS	1
BLOOMFIELD TOWNSHIP	1
BRANCH COUNTY	1
BUENA VISTA TOWNSHIP	1
BURTON	2
CADILLAC	1
CANTON TOWNSHIP	1
CASS COUNTY	1
CENTERLINE	3
CHARLEVOIX	1
CHIPPEWA COUNTY	1
CLAWSON	3
CLINTON COUNTY	2
CLINTON'TOWNSHIP	8
COLDWATER	1
COMMERCE TOWNSHIP	1
ODRUNNA	1
CRAWFORD COUNTY	2
DEARBORN	13
DEARBORN HEIGHTS	1
DELTA COUNTY	1
DETROIT	16
DOWAGIAC	1
EAST DETROIT	10
EAST JORDAN	1
EAST LANSING	3
ECORSE	5
EMMET TOWNSHIP	1
ESCANABA	2
ESSEXVILLE	1
FARMINGTON HILLS	3
FENTON	1
FERNDALE	1
FERRYSBURG	1
FLATROCK	1
FLINT	7
FRASER	2
GARDEN CITY	5
GAYLORD	1
GENESEE COUNTY	4
GLADWIN	1
GOGEBIC COUNTY	1
GRAND HAVEN	1
GRAND RAPIDS	5
GRAND TRAVERSE COUNTY	1
GRATIOT COUNTY	1
GREEN OAK TOWNSHIP	2
GREENVILLE	1
GROSSE POINTE	5
GROSSE POINTE FARMS	5
GROSSE POINTE PARK	4
GROSSE POINTE WOODS	2
HAMTRAMCK	6
HARPER WOODS	10
HASTINGS	4
HAZEL PARK	1
HIGHLAND PARK	8
HILLSDALE	2
HILLSDALE COUNTY	1
HOLLY	1
HOUGHTON COUNTY	2
HUNTINGTON WOODS	3
INGHAM COUNTY	3
INKSTER	3
IONIA COUNTY	3
IOSCO COUNTY	1
IRON MOUNTAIN	4
IRONWOOD	2
JACKSON	3
JACKSON COUNTY	2
KALAMAZOO	3
KALAMAZOO COUNTY	1
KALKASKA COUNTY	1
LAKE COUNTY	1
LANSING	13
LAPEER COUNTY	3
LARIUM	1
LEELANAU COUNTY	2

LENAWEE COUNTY	1
LEONI TOWNSHIP	2
LINCOLN PARK	4
LIVINGSTON COUNTY	2
LIVONIA	6
LOWELL	2
LUDINGTON	1
MACOMB COUNTY	1
MADISON HEIGHTS	6
MANISTEE	7
MANISTEE COUNTY	4
MANISTIQUE	1
MARQUETTE	1
MARSHALL	1
MARYSVILLE	1
MECOSTA COUNTY	1
MELVINDALE	2
MENOMINEE	2
MERIDIAN TOWNSHIP	3
MIDLAND	6
MONROE	2
MONROE COUNTY	5
MONTCALM COUNTY	1
MONTMORENCY COUNTY	1
MOUNT CLEMENS	7
MOUNT PLEASANT	2
MUNISING	1
MUSKEGON	6
MUSKEGON COUNTY	1
MUSKEGON HEIGHTS	3
MUSKEGON TOWNSHIP	2
NILES	3
NOVI	1
OAK PARK	1
OAKLAND COUNTY	7
OGENAW COUNTY	3
OSCEOLA COUNTY	1
OSCODA TOWNSHIP	1
OTSEGO	1
OTTAWA COUNTY	3
PINCONNING	1
PLYMOUTH TOWNSHIP	1
PONTIAC	11
PORT HURON	5
PORTAGE	5
REDFORD TOWNSHIP	4
RIVER ROUGE	2
RIVERVIEW	4
ROMULUS	1
ROSEVILLE	5
ROYAL OAK	1
SAGINAW	12
SAGINAW COUNTY	1
SAGINAW TOWNSHIP	1
SALINE	1
SANILAC COUNTY	2
SAULT STE. MARIE	2
SHELBY	1
SOUTHFIELD	5
SOUTHGATE	1
ST. CLAIR COUNTY	3
ST. CLAIR SHORES	3
ST. JOSEPH	2
STERLING HEIGHTS	9
STURGIS	1
SUMMIT TOWNSHIP	1
SUMPTER TOWNSHIP	1
SYLVAN LAKE	2
TAYLOR	3
THREE RIVERS	2
TRAVERSE CITY	2
TRENTON	1
TROY	2
TUSCOLA COUNTY	1
VAN BUREN COUNTY	1
WAKEFIELD	1
WARREN	9
WASHTENAW COUNTY	5
WATERFORD TOWNSHIP	1
WAYNE	2
WAYNE COUNTY	8
WEST BLOOMFIELD TOWNSHIP	3
WESTLAND	2
WILLIAMSTON TOWNSHIP	1
Wixom	1
WOODHAVEN	2
WYANDOTTE	2
WYOMING	1
YPSILANTI	2

SOURCES: See Table 1.

APPENDIX B

THE DETROIT EXPERIENCE WITH ACT 312 ARBITRATION

Fiscal Year	Settlement Reached With	Arbitration Initiated With	Arbitrator
1970		Police Officers Firefighters	Haber Platt
1971	Lieutenants & Sergeants(LSA)	Police Officers Firefighters	Alexander Killingsworth
1972		Police Officers Firefighters	Fox Herman
1973	Medical Technicians		
1974	LSA Firefighters Police Officers Medical Technicians	Police Officers (Residency Only)	Platt
1975 1976			
1977		Police Officers LSA Firefighters Medical Technicians	Bowles Howlett Howlett Roumell
1978 1979			
1980		Police Officers LSA Firefighters Medical Technicians	LoCicero McCormick Chiesa Dobry
1981	Settlement of all 1980 cases except fire promotions	Firefighters (Promotions Only)	Chiesa
1982			
1983		Police Officers LSA Firefighters	Kruger Strichartz Kiefer
1984		Medical Technicians	Rollins
1985			

SOURCE: City of Detroit, Department of Labor Relations.