Compulsory Arbitration---P.A. 312 of 1969, as amended—MCL 423.231 et. seq.

Application to Corrections Officers

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1. The Michigan Legislature, by enacting the compulsory arbitration act in 1969, emphatically set forth the "public policy" justifying passage of the law, stating in section 1 thereof:

   > *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.***

2. The legislative declaration of public policy reflected a *"quid pro quo,"* establishing compulsory arbitration as the balance between the prohibition against employee strikes and the need to maintain high morale and efficient operation of police/fire departments.

3. The Legislature, in section 2 of the Act, set forth which public employees were eligible to participate in compulsory arbitration, stating in pertinent part:

   > *As used in this act,* ***"public police…department employee"*** *means any employee of a…county…who is engaged as a police officer…****or subject to the hazards thereof…***

4. Pursuant to the "public policy" declaration, the provisions of the act, which include the section 2 delineation of eligible employees, was to be "liberally construed."

5. When the Compulsory Arbitration statute was enacted, correction officers met the eligibility criteria declared by the Legislature, especially given the mandate that the act be "liberally construed":

   a. *Public employees that work for a County*
   b. *Subject to the same hazards faced by police officers*
   c. *Do not have a right to strike*
   d. *Suffer from the same issues affecting morale as faced by police officers*

6. In 1980, the Michigan Supreme Court, in *Metropolitan Council No. 23, AFSCME v Oakland County Prosecutor,* 409 Mich 299, 335; 294 NW2d 578 (1980), usurped Legislative authority by engaging in "judicial legislating," rewriting the eligibility standard for compulsory arbitration. The Court added fictional criteria to the statute, mandating that eligibility of employees also be based on whether the employer is a **"critical service," such that a work**

stoppage would threaten public safety. Subsequently, the Court of Appeals, in *Capital City Lodge No. 141 FOP v Ingham County,* 155 Mich App 116, 117-118; 399 NW2d 463 (1986), expanded judicial legislating concluding that if employees in a work stoppage could be replaced, then no threat to public safety would exist, hence the employees would not be eligible for compulsory arbitration. The decision nullified a previous Court of Appeals ruling which had recognized guards (corrections officers) met the eligibility for compulsory arbitration [*Local No. 214, Teamsters v Detroit,* 91 Mich App 273; 283 NW2d 722 (1979)]. As a result of the fictional judicial test, MERC, as the administrative agency overseeing compulsory arbitration eligibility matters, has repeatedly disenfranchised corrections officers from statutory eligibility. *See: Saginaw County Sheriff,* 1992 MERC Lab Op 693, 696.

7. The judicial legislating which created the fictional "critical service/work stoppage" test, directly contravenes: (1) the stated Legislative "public purpose" of the act; (2) the Legislative definition of eligibility and the singular dominant criteria of "subject to the hazards" standard; and (3) the Legislative mandate that the act be liberally construed.

8. In 2003, the Legislature enacted PA 125, pertaining to Local Corrections Officers: Training and Certification, being MCL 791.5311 et. seq. The law mandates that individuals working as corrections officers be trained and certified. The House Legislative Analysis Section (8-13-03) identified the necessity for the legislation, stating in pertinent part:

   The problem that has surfaced involves the changing nature of supervising detainees on the local level. According to local correctional officers, today's inmates are often younger, more violent, and more likely to have a substance abuse problem. During the time spent in county jails, they may still be addicted to drugs or alcohol or be acting out from anger or emotional problems. According to a local correctional officer from Monroe County, his responsibility for the inmates he supervised includes de-escalating conflicts, providing a listening ear, administering discipline, dispensing medicines, and assessing an inmate's need for medical care (e.g., urgent vs. minor ailment). Some inmates may be detainees of the Immigration and Naturalization Service awaiting deportation, some are suicidal, while others tend to commit the same type of crimes while being detained as they did on the streets. In short, today's local correctional officers supervising county jails are faced with a veritable hodge-podge of detainees arrested for crimes ranging from drunk and disorderly to murder.

   In light of the increased responsibilities borne by those supervising detainees and inmates on a local level, many believe that requiring a standardized training regimen and certification would solve many of the problems faced by these professionals.

9. As a result of PA 125 of 2003, the Legislature has not only reaffirmed the significance of the corrections officer position, it has also created a restriction against individuals working in a correctional facility without the requisite certification. The speculative possibility of using non-certified replacements is, therefore, not a valid assertion. In addition, where a court order exists mandating a certain level of jail staffing numbers (i.e., Wayne County) the

prospect of replacing corrections officers with non-certified personnel is not realistic. Likewise, potential civil liability and conflict with liability insurance underwriting creates a limit/prohibition on replacing certified correctional officers with non-certified personnel.

10. Corrections officers continue to meet the eligibility criteria declared by the Legislature in the original compulsory arbitration statue, especially given the unaltered Legislative mandate that the act be "liberally construed." Passage of PA 125 of 2003 creates additional justification for corrections officers to participate in compulsory arbitration. Because of judicial interference, amendment to either the existing statute or establishing of a stand-alone Corrections Officers Compulsory Arbitration Act, is necessary to restore the legislative intent and public policy expressly declared in sections 1 and 2 of the original compulsory arbitration act.