

REGULATION

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Subject: PROHIBITED SUBJECT OF BARGAINING COMPLAINTS			

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1. **PURPOSE**

This regulation establishes a process for resolving complaints that an agreement or arbitrator’s decision violates, rescinds, limits, or modifies a Civil Service rule or regulation governing a prohibited subject of bargaining.

2. **CIVIL SERVICE COMMISSION RULE REFERENCE**

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at www.michigan.gov/mdcs.

Rule 6-2 Employee-Employer Relations System

6-2.1 Collective Bargaining Authorized

The civil service commission authorizes classified employees in eligible positions to organize, elect an exclusive representative, and negotiate with the employer over proper subjects of bargaining.

- (a) **Rights and obligations.** *The employer, employees, and exclusive representatives have the rights and obligations provided in the civil service rules and regulations.*
- (b) **Subjects of bargaining.** *The employer and the exclusive representative are required to bargain in good faith over mandatory subjects of bargaining. The employer may, but is not required to, negotiate over permissive subjects of bargaining. A party cannot bargain over prohibited subjects of bargaining.*
- (c) **Intent; retention of authority.** *The civil service commission intends to defer to and approve collective bargaining agreements negotiated in good faith between the employer and an exclusive representative when permitted by this chapter. However, the commission is obligated to retain and exercise its constitutional authority in all matters. The commission expressly retains the authority to do all of the following:*

* * *

- (3) *Determine, during the term of a collective bargaining agreement, if a provision previously approved has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining, notwithstanding any contrary provision of the agreement.*

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Rule 6-3 Commission Authority

6-3.1 Commission Relationship to Collective Bargaining

The ability of eligible employees to elect an exclusive representative and engage in collective bargaining is a privilege granted by the civil service commission under its exclusive constitutional authority. However, the commission cannot delegate its constitutional responsibilities to the collective bargaining parties and the privilege to engage in collective bargaining remains subject to the commission's sovereign authority and the rules of the commission.

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- (d) **Effect of agreement on civil service commission.** *The civil service commission (including civil service staff) (1) is not a party to a collective bargaining agreement approved by the commission; (2) does not become a party to the collective bargaining agreement by virtue of the commission's review, approval, or modification; (3) is not subject to any of the provisions of a collective bargaining agreement; and (4) is not subject to the jurisdiction of an arbitrator or other fact-finder acting under authority of a collective bargaining agreement approved by the commission.*

6-3.2 Prohibited Subjects of Bargaining

(a) Prohibitions.

- (1) **Interpretation or application.** *A collective bargaining agreement, impasse panel recommendation, settlement agreement or arbitrator's decision under a collective bargaining agreement cannot be interpreted or applied to violate, rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.*

(2) **Settlement.** *An appointing authority or labor organization cannot approve or implement a settlement of any claim or grievance or take any other action that violates, rescinds, limits, or modifies a civil service rule or regulation governing a prohibited subject of bargaining.*

(b) **Prohibited subjects of bargaining.** *The civil service authority, policy, rules, regulations, procedures, and practices governing or regulating any of the following are prohibited subjects of bargaining:*

(1) **Classification.** *The determination of the classification and grade assignment of a new or existing position in the classified service. Although the rates of compensation for an existing class of positions is a mandatory subject of bargaining, the state personnel director retains the sole authority to establish the initial rate of compensation for a newly-created class of positions when the new classification is included in the official classification plan.*

(2) **Selection.** *The determination of the qualifications of candidates for positions in the classified service, including, but not limited to, appraisal, probation, and appointment.*

(3) **Class Clusters.** *The determination of classification equivalency or eligibility, including, but not limited to, the creation of class clusters and preauthorized lateral job change lists.*

(4) **Working out of class.** *The determination of working out of class, including, but not limited to, (1) whether an employee has worked out of class, (2) the duration of any working-out-of-class assignment, (3) the classification and level of the duties and responsibilities performed while working out of class, (4) the amount of any working-out-of-class pay or benefits due an employee, and (5) the rights of an employee seeking review of a working-out-of-class claim.*

(5) **Disbursements for personal services.** *Review and approval or disapproval of requests by agencies to make disbursements for personal services outside the classified service. Notwithstanding this subsection, the following are proper subjects of bargaining:*

(A) *Notice to the exclusive representative of a request for permission by the appointing authority to make disbursements for personal services outside the classified service.*

(B) *The obligations to meet and confer regarding the impact of a decision to make disbursements for personal services outside the classified service.*

(C) *Reasonable efforts on the part of the employer, not involving a delay in implementation, to reduce the impact on current classified employees of a decision to make disbursements for personal services outside the classified service.*

(6) **Political or union activity.** *Political activity or union activity by classified employees during actual-duty time.*

- (7) **Civil Service Authority.** *The authority of the civil service commission, the state personnel director, or civil service staff established by law, including the civil service rules and regulations.*
- (8) **System of collective bargaining.** *The system of collective bargaining created in the civil service rules, the bargaining relationships authorized in the rules, and the limitations, restrictions, and obligations on the collective bargaining parties, collective bargaining agreements, and eligible employees established in the civil service rules and regulations.*
- (9) **Outside the bargaining unit.** *Conditions of employment outside the bargaining unit.*
- (10) **Patents and copyrights.** *Compensation related to patents and copyrights.*
- (11) **Union Leave.** *The requirements and limitations on union leave in rule 6-3.10(c).*
- (12) **Strikes.** *The requirements and limitations on strikes and strike-related grievances.*
- (13) **Excluded positions.** *The requirements, limitations, and procedures regarding excluded positions in rule 6-6.4.*
- (14) **Abolition or creation of positions.** *The constitutional authority of an appointing authority to create or establish positions for reasons of administrative efficiency and the grievance and appeal rights of classified employees aggrieved by the abolition or creation of a position.*
- (15) **Assumptions.** *The determinations by the state personnel director or the civil service commission authorized in Rule 2-16 [Assumptions], including, but not limited to, an assumption of a position, classification of an assumed position, initial appointment to an assumed position, initial treatment of an assumed employee, and initial pay and benefits of an assumed employee.*

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6-3.5 Modification of Agreement or Arbitrator's Decision

Notwithstanding any contrary rule or provision of a collective bargaining agreement, the civil service commission reserves the exclusive authority to determine during the term of a collective bargaining agreement if a provision previously approved has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.

- (a) **Complaint.** *Any person may file a complaint with the state personnel director that a collective bargaining agreement or arbitrator's decision or settlement agreement under a collective bargaining agreement has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining. The director shall investigate the complaint. After providing notice to the parties and an opportunity to be heard, the director shall determine if a violation has occurred. The definition of prohibited subjects of*

bargaining shall be liberally construed to enforce the constitutional authority of the civil service commission.

- (b) **Remedy.** *If the state personnel director determines that a violation has occurred, the director shall issue a report of findings to the civil service commission. The director may also take any one or more of the following actions:*
- (1) *Issue an order to cure or correct the violation.*
 - (2) *Issue an order to enjoin future violations.*
 - (3) *Recommend to the civil service commission that it amend the existing collective bargaining agreement to cure or correct the violation.*
 - (4) *In the case of an arbitrator's decision, the state personnel director may also exercise superintending authority to vacate or modify the decision of the arbitrator or remand the matter to the arbitrator for further consideration.*
- (c) **Appeal.** *A party to the collective bargaining agreement who is aggrieved by a final decision of the state personnel director may file an application for leave to appeal to the civil service commission within 28 calendar days after the decision is issued.*
- (d) **Exclusive jurisdiction.** *The procedures provided in this rule and in the regulations are the exclusive procedures for determining if a collective bargaining agreement, arbitrator's decision, or settlement agreement has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining. A provision of a collective bargaining agreement, including a grievance procedure permitted by rule 6-9.6 [Negotiated Grievance Procedures], cannot replace, interfere with, or limit this exclusive jurisdiction or the superintending authority of the state personnel director or the civil service commission.*

3. **STANDARDS**

A. **Complaints.**

1. **Filing.** Any person may file a prohibited subject of bargaining complaint, as authorized in rule 6-3.2(a). The complaint must be in writing and filed with the State Personnel Director. The complainant must also serve a copy of the entire complaint on the Office of the State Employer and any affected labor organization.
2. **Contents of Complaint.** The complaint must contain the following:
 - a. The name, address, telephone number, and signature of the complainant.
 - b. A concise summary of the factual background and an explanation of how the collective bargaining agreement has been applied or interpreted to violate or otherwise rescind, limit, or modify a Civil Service rule or regulation governing a prohibited subject of bargaining.
 - c. If the complaint implicates a decision of an arbitrator, a complete copy of the arbitrator's decision must be attached.

B. Review of Complaint.

1. **Administrative Dismissal of Complaint.** The State Personnel Director, or the director's designee, may administratively dismiss a complaint without a hearing for any of the following reasons:
 - a. **Lack of jurisdiction.** The State Personnel Director lacks jurisdiction over a necessary party or over the subject matter of the complaint.
 - b. **Another action pending.** Another action has been initiated involving substantially the same issues raised in the complaint.
 - c. **Barred by prior claim.** Substantially the same complaint was adjudicated to conclusion in another action between the same parties.
 - d. **Insufficient filing.** The filing is incomplete or fails to allege the violation of a Civil Service rule or regulation governing a prohibited subject of bargaining.
2. **Assignment of Adjudicating Officer.** If the complaint is not administratively dismissed, the State Personnel Director shall designate an adjudicating officer to investigate the complaint.
3. **Conduct of Investigation.** The adjudicating officer shall give written notice of the investigation to the (1) complainant, (2) Office of the State Employer, and (3) exclusive representative.
 - a. **Interested Parties.** The complainant, Office of the State Employer, and exclusive representative may file a written appearance with the adjudicating officer. Only parties that file an appearance may participate as interested parties.
 - b. **Conferences.** The adjudicating officer may conduct conferences with the interested parties as necessary to investigate the complaint.
 - c. **Summary disposition without a hearing.** If there is no genuine issue as to any material fact, the adjudicating officer may recommend a final disposition of the complaint without a hearing based on the complaint and the written submissions of the interested parties, including affidavits.
 - d. **Disposition with a hearing.** If there is a genuine issue as to any material fact, the adjudicating officer shall conduct a hearing, which is limited to the material facts in dispute. The interested parties must have a reasonable opportunity to present evidence, examine and cross-examine witnesses, and present argument. The adjudicating officer may swear witnesses, take testimony, receive evidence, including opinion evidence, and take other actions necessary to investigate the complaint and consider fairly the claims of the interested parties. The rules of evidence do not apply, but the adjudicating officer may refuse to take or admit evidence that is repetitive, irrelevant, unreliable, or speculative.
4. **Recommended Decision of the Adjudicating Officer.** The adjudicating officer shall examine the complaint, the collective bargaining agreement, any arbitrator's decision, and any other record evidence in the light of the Civil Service rules and regulations governing prohibited subjects of bargaining. The adjudicating officer shall recommend a decision on the complaint to the

State Personnel Director. The recommended decision shall set out the adjudicating officer's findings of facts and conclusions of law. If the adjudicating officer finds a violation, the adjudicating officer shall recommend a remedy authorized in rule 6-3.5(b).

5. **Final Decision of the State Personnel Director.** The State Personnel Director shall review the recommendation of the adjudicating officer and issue a final decision on the complaint. If the director disagrees with the recommendation of the adjudicating officer, the director shall set forth the reasons for that disagreement in writing as part of the final decision.
6. **Report to the Civil Service Commission.** If the State Personnel Director determines that a violation has occurred, the director shall issue a report to the Civil Service Commission. In addition, the director may take any of the following actions:
 - a. Issue an order to cure or correct the violation.
 - b. Issue an order to enjoin future violations.
 - c. Recommend to the Civil Service Commission that it amend the existing collective bargaining agreement to cure or correct the violation.
 - d. In an arbitrator's decision, exercise superintending authority to vacate or modify the decision of the arbitrator or remand the matter to the arbitrator for further consideration.
7. **Appeal.** If the State Employer or exclusive representative is aggrieved by the final decision of the State Personnel Director, either party may appeal to the Civil Service Commission by filing an application for leave to appeal within 28 calendar days after the date the final decision of the director is issued.

CONTACT

Questions regarding this regulation should be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, MI 48909; or by telephone at 517-373-3024.