

Michigan Civil Service Commission

Regulation 6.05

Subject: Impasse Panels		
SPDOC No.: 22-09	Effective Date: September 4, 2022	Replaces: Reg. 6.05 (SPDOC 16-06, January 1, 2017)

1. Purpose

This regulation establishes the exclusive process for resolving collective bargaining disputes that are not agreed to by the employer and exclusive representatives of eligible employees in collective bargaining negotiations.

2. CSC Rule References

6-9 Negotiations and Impasse

6-9.1 Primary Negotiations

The state employer, acting in consultation with principal departments, the attorney general, and the secretary of state, shall direct primary negotiations on behalf of the employer. The state employer shall coordinate all negotiations and administration of collective bargaining agreements with the appointing authorities. Upon request of the attorney general or the secretary of state, the state employer shall reserve all noneconomic issues in the office of attorney general or department of state for secondary negotiations. The parties may coordinate bargaining between the state employer and more than one exclusive representative.

6-9.2 Timing of Primary Negotiations

The state personnel director shall annually establish a time frame for the conduct of primary negotiations and impasse resolution. The time frame must coordinate with the legislative budget cycle and the constitutional provisions governing the timing of increases in rates of compensation for classified employees. If the collective bargaining parties cannot reach agreement by the date established by the director, the parties may refer the matter to the impasse panel for resolution. If a newly-certified exclusively representative cannot complete bargaining for a new agreement before a new fiscal year begins, the rates of compensation for its members are determined in the same manner as nonexclusively represented employees.

6-9.3 Failure to Request Impasse

If the parties have not reached a voluntary agreement or timely requested impasse panel assistance by the date an existing collective bargaining agreement expires, the civil service commission may require the parties to refer unresolved issues to the impasse panel. The commission shall provide the parties

written notice of its intention to consider a mandatory referral at least 28 calendar days in advance of its consideration.

6-9.4 Impasse Resolution

If either party files a timely request for impasse panel assistance, the parties are eligible for impasse panel assistance. If neither party files a timely application, the parties are ineligible for impasse panel assistance, except as provided in rule 6-9.3. If the parties are ineligible for impasse panel assistance, the state personnel director may require the use of mediation, advisory arbitration, or fact-finding provided in the regulations. If the civil service commission approves increases in the rates of compensation too late to be included in the governor's budget, the increases must be submitted under the waiver of notice provisions of article 11, section 5, of the constitution.

- (a) **Impasse panel procedures.** The impasse panel is governed by the civil service rules and regulations.
- (1) **Notice of impasse.** The state personnel director shall notify the employment relations board if a party submits a request for impasse panel assistance.
 - (2) **Required submissions by the parties.** The state personnel director shall establish a date by which the parties must submit the following to the impasse panel:
 - (A) A joint certification of the text of all contract provisions to which the parties have tentatively agreed.
 - (B) A joint certification of the provisions over which the parties have negotiated in good faith but have failed to reach a proposed agreement.
 - (C) A submission by each party of proposed contract language for those provisions certified at impasse in subsection (B).
 - (3) **Date of recommendation.** The state personnel director shall establish the date by which the impasse panel must submit its recommendation to the civil service commission.
 - (4) **Establish impasse panel.** Upon notice by the state personnel director, the employment relations board shall designate the members of the impasse panel. The panel shall consider the submissions of the parties and shall make a recommendation to the civil service commission.
 - (5) **Coordination.** The impasse panel shall simultaneously consider all unresolved contract disputes certified at impasse on a coordinated basis in all bargaining units as prescribed in the regulations.
 - (6) **Recommendation.** The impasse panel shall send its recommendation to the civil service commission on or before the date established by the state personnel director.
 - (7) **Voluntary agreement.** The parties may resolve their impasse by voluntary agreement at any time before the civil service commission takes final action on the recommendation of the impasse panel.

(b) Impasse panel criteria. The parties shall address, and the impasse panel shall consider, the following criteria, if relevant:

- (1) Stipulations and agreements.*
- (2) The interests and welfare of the public.*
- (3) The financial condition and ability of the state.*
- (4) Comparison of the rates of compensation and other conditions of employment of classified employees with other governmental and private sector employees.*
- (5) Appropriate economic indicators and forecasts.*
- (6) Total compensation, including fringe benefits, presently received by employees.*
- (7) Such other factors that are normally taken into consideration in determining rates of compensation and other conditions of employment.*

6-9.5 No Disclosure

A mediator cannot be required to disclose information relating to a particular dispute acquired while mediating the dispute under this rule.

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6-9.7 Secondary Negotiations and Agreements

(a) Approval of secondary agreement. If secondary negotiations are authorized in a primary agreement, any secondary collective bargaining agreement must be submitted to the civil service commission for review as provided in rule 6-10. If the parties cannot reach agreement in secondary negotiations, either party may file a request for impasse panel assistance under the provisions of rule 6-9.4.

(b) Expiration and continuation of secondary agreement. A secondary agreement shall automatically expire on the date of expiration of the primary agreement under which the secondary agreement was approved, unless the civil service commission has approved an extension of the secondary agreement. The commission may modify a secondary agreement before approving an extension.

(1) Automatic extension with extension of primary agreement. If the civil service commission authorizes the extension of a primary agreement, any secondary agreement approved under that primary agreement is automatically extended for the same period, unless the commission expressly provides otherwise.

(2) Extension of secondary agreement under new primary agreement.

(A) If the civil service commission considers a new primary agreement or primary impasse recommendation, the parties may jointly request that the commission extend an existing secondary agreement during secondary negotiations under a new primary agreement. An approved extension cannot exceed 12 months.

- (1) *If, by the end of the approved extension period, the parties have not reached agreement on a new secondary agreement and neither of the parties has requested impasse panel assistance, the existing secondary agreement expires.*
- (2) *If, by the end of the approved extension period, the parties have submitted a new secondary agreement to the civil service commission or one of the parties has requested impasse panel assistance, the existing secondary agreement shall continue in effect until the commission takes final action on the secondary agreement or the impasse panel recommendation.*
- (B) *If the civil service commission approves a new primary agreement and, by the effective date of the new primary agreement, the commission has not approved an extension of an existing secondary agreement, the secondary agreement expires on the effective date of a new primary agreement.*

6-9.8 Regulations

The state personnel director may issue regulations not inconsistent with these rules to establish impasse, conference, mediation, and advisory arbitration procedures for the resolution of disputes.

3. Standards

- A. Panel Establishment.** The Employment Relations Board may establish an impasse panel or appoint itself. The Board may authorize assignment of any part of a dispute to a panel member or an arbitrator to act as an impasse hearing officer and prepare a record and report for final panel consideration.
- B. Duties.** The panel shall consider unresolved contract disputes certified at impasse and provide the commission an evaluation of impasse issues and recommendations for their resolution based on established criteria.
- C. Participation.** Impasse participation for primary-negotiation issues is limited to the Office of the State Employer (OSE) and exclusive representatives. Participation for secondary-negotiation issues is limited to appropriate employers, the OSE, and exclusive representatives. Upon timely receipt by the Board of a request of either party, the applicants are eligible for panel assistance, if the request was preceded by good-faith negotiations and any required mediation. A party requesting panel assistance must simultaneously serve a copy of the request on the other bargaining party.
- D. Impasse Panel Hearing.**
- 1. Notice of time and place.** Upon appointment of the panel, its chair shall call a hearing after giving reasonable notice of its time and place, unless the rules or regulations authorize other disposition. The chair or designee may also order relevant submissions from the parties.

2. **Parties.** Upon application and for good cause shown, the panel may grant leave to intervene to a person, labor organization, or governmental unit having a substantial interest.
3. **Evidence.** The proceedings are informal; technical rules of evidence do not apply. Any oral or documentary evidence and other data deemed relevant may be received by the panel in evidence.
4. **Record.** The panel shall make a verbatim record of the proceedings. Transcripts may be made available to the parties at their own expense. A copy of the transcript is not necessary for a determination by the panel.
5. **Attendance.** Attendance at impasse hearings is limited to the participants. Each party shall select one spokesperson during the hearing.
6. **Procedural requests.** The panel shall rule on procedural requests, appearances of witnesses, and other motions. Due to time constraints imposed by the constitutional budgetary cycle, the panel's formal hearings must proceed promptly. Adjournments or delays cannot be granted unless the chair determines that the delay is necessary. The hearing will proceed in the absence of a party who, after due notice, fails to appear or obtain an adjournment by a designated substitute. The panel may require an absent party to submit evidence needed to make its determination.
7. **Coordinated proceedings.** The panel shall consider simultaneously all certified unresolved disputes in all bargaining units on a coordinated basis. Coordinated consideration of issues is controlled by the similarity of issues considered. The panel can consider issues on the same specific subject matter simultaneously for all bargaining units. The panel shall determine the timing of this consideration.
8. **Witnesses.** The panel may administer oaths, require witnesses' attendance, and require production of documents deemed material to the dispute's just determination. The panel may permit examination and cross-examination of witnesses, receive relevant testimony and evidence, introduce documentary or other relevant evidence, and rule on offers of proof.

E. Agreements.

1. **Agreements by stipulation.** Agreement by stipulation of the parties until the commission's final consideration of panel recommendations is permitted. The parties shall forward such agreements to the panel and commission.
2. **Remand for further bargaining.** Anytime before rendering the panel's recommendation, its chair may remand a dispute to the parties for more bargaining for a specified period. The chair shall notify the commission of any remand.
3. **Order to negotiate.** During the hearing, the panel may direct the parties to engage in concurrent negotiations of selected disputes.

F. Presentations. The parties shall offer concise statements of proposals, accompanied by data, exhibits, and briefs that the parties intend to rely upon at the impasse proceedings. Any rebuttal must clarify the issues in dispute and specifically respond to the other bargaining party's position on economic and non-economic demands. The panel shall determine the timing of rebuttal before impasse hearings.

G. Impasse Panel Recommended Decisions.

1. **Impasse criteria.** The panel shall base its findings and recommendation on the criteria in rule 6-9.4(b).
2. **Majority decisions.** The panel shall issue a recommended decision based on the evidence and matters officially noticed. The recommended decision must be supported by a majority vote of the panel. The decision must discuss all issues certified at impasse and contain findings of fact and a statement of the reasons supporting the decision. The panel shall timely submit copies of its decision to all parties and the commission. If a majority cannot agree to a recommendation, the panel shall forward the matter to the commission with separate recommendations of members.

H. Procedural Determinations. Unless otherwise specified in the rules or regulations, the Board may make all decisions on scheduling hearings and submission of position statements and related data.

I. Jurisdictional Determinations. If, after consideration of the parties' required submissions and any other submissions ordered by the chair or designee, the panel determines that it lacks jurisdiction over a request for impasse assistance or that a request for impasse assistance is otherwise unauthorized under the rules, the panel may refer the matter back to the parties or recommend appropriate action to the commission without conducting a hearing.

CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-284-0093; or to MCSC-OGC@mi.gov.