

# Michigan Civil Service Commission

## Regulation 6.07

<b>Subject:</b> <b>Prohibited Subject of Bargaining Complaints</b>		
<b>SPDOC No.:</b> 18-03	<b>Effective Date:</b> January 1, 2019	<b>Replaces:</b> Reg. 6.07 (SPDOC 16-06, January 1, 2017)

### 1. Purpose

This regulation establishes a process to resolve complaints that an agreement or arbitrator's decision violates, rescinds, limits, or modifies a rule or regulation governing a prohibited subject of bargaining.

### 2. CSC Rule References

#### 6-3 *Commission Authority*

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#### 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.* Establishment and maintenance of the classification plan, including all position-classification issues, working-out-of-class issues, class clusters, and preauthorized transfer lists. A collective bargaining agreement cannot confer exclusive authority to perform specific duties to a classification or bargaining unit. The state personnel director has sole authority to set the initial rate of compensation for a classification when first added to the official classification plan.

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

- (3) **Assignment of staff.** *The employer's rights under rule 6-4.1(d) to assign staff, including non-disciplinary transfers, employment preference, recall, working out of class, scheduling, shift assignment, overtime assignment, and defining seniority.*
- (4) **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.*
- (5) **Political or union activity.** *Political activity or union activity by classified employees during actual-duty time; requirements and limitations on union leave in rule 6-3.9(c); and requirements and limitations on strikes and strike-related grievances in rule 6-15.*
- (6) **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.*
- (7) **System of collective bargaining.** *The system of collective bargaining created in the rules and regulations, including the limitations, restrictions, and obligations on collective bargaining parties, eligible employees, collective bargaining agreements, and conditions of employment outside the bargaining unit.*
- (8) **Specifically prohibited compensation issues.** *Compensation related to patents and copyrights, performance pay, critical-position premium, and any other compensation issue specifically identified by rule or regulation as a prohibited subject of bargaining.*
- (9) **Abolition or creation of positions.** *Appointing authorities' constitutional authority to create or abolish positions for reasons of administrative efficiency and the director's authority under rule 2-16 to assume positions.*

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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, 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 6-3.5(a). The complaint must be filed with the state personnel director by email to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).
2. **Contents of complaint.** The complaint must contain the following:
  - a. The complainant's name, address, telephone number, and signature.

- b. A concise summary of the factual background and an explanation of how 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.
- 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.** The state personnel director or director's designee may administratively dismiss a complaint for any ground in rule 8-4 without prior notice.
2. **Assignment.** If the complaint is not administratively dismissed, the director shall designate an adjudicating officer to investigate the complaint.

**C. Investigation.** The adjudicating officer shall give written notice of the investigation to the interested parties.

1. **Interested parties.** The complainant, office of the state employer, and exclusive representative are interested parties.
2. **Conferences.** The adjudicating officer may conduct conferences with the interested parties as necessary to investigate the complaint. The adjudicating officer may direct the interested parties to file briefs on specified issues.
3. **Summary disposition.** If there is no genuine issue over any material fact, the adjudicating officer may recommend a final disposition of the complaint without a hearing based on the complaint and written submissions of interested parties, including affidavits.
4. **Disposition with a hearing.** If there is a genuine issue over any material fact, the adjudicating officer shall conduct a hearing over just 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 repetitive, irrelevant, unreliable, or speculative evidence.

**D. Decision.**

1. **Recommended decision.** The adjudicating officer shall examine the complaint, the collective bargaining agreement, any arbitrator's decision, any other record evidence, and the rules and regulations governing prohibited subjects of bargaining. The adjudicating officer shall recommend a decision on the complaint to the director that sets out 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).
2. **Director's decision.** The director shall review the adjudicating officer's recommendation and issue a final decision on the complaint. If the director disagrees with the recommendation, the director shall set forth the reasons for that disagreement in writing as part of the final decision. If the director determines that a violation has occurred, 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 that the commission amend its rules or a collective bargaining agreement to cure or correct the violation.
  - d. In an arbitrator's decision, exercise superintending authority to vacate or modify the arbitrator's decision or remand to the arbitrator for further consideration.
- E. **Appeal.** An interested party aggrieved by a final decision may appeal to the commission by filing an application for leave to appeal within 28 days after the decision is issued.

### **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; 517-373-3024; or [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).