

SENATE BILL No. 241

March 9, 1989, Introduced by Senators N. SMITH, DILLINGHAM, SHINKLE, CROSEY, GEAKE, FREDRICKS, DI NELLO, CARL and WELBORN and referred to the Committee on Human Resources and Senior Citizens.

A bill to amend the title and sections 1, 2, and 6 of Act No. 336 of the Public Acts of 1947, entitled as amended

"An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; and to prescribe means of enforcement and penalties for the violation of the provisions of this act,"

being sections 423.201, 423.202, and 423.206 of the Michigan Compiled Laws; and to add sections 8, 17, 18, 19, 20, 21, and 22.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 2, and 6 of Act
2 No. 336 of the Public Acts of 1947, being sections 423.201,
3 423.202, and 423.206 of the Michigan Compiled Laws, are amended
4 and sections 8, 17, 18, 19, 20, 21, and 22 are added to read as
5 follows:

1 TITLE

2 An act to prohibit strikes by certain public employees; to
3 provide review from disciplinary action with respect thereto; to
4 provide for the mediation of grievances and the holding of elec-
5 tions; to declare and protect the rights and privileges of public
6 employees; ~~and to prescribe means of enforcement~~ THE POWERS
7 AND DUTIES OF THE EMPLOYMENT RELATIONS COMMISSION, EMPLOYERS,
8 EMPLOYEES, BARGAINING REPRESENTATIVES, AND CERTAIN OTHER PERSONS;
9 and TO PRESCRIBE penalties. ~~for the violation of the provisions~~
10 ~~of this act.~~

11 Sec. 1. (1) As used in this act:

12 (A) "AFFILIATED ORGANIZATION" MEANS ANY LABOR ORGANIZATION
13 AT THE STATE OR NATIONAL LEVEL WITH WHICH A LOCAL BARGAINING REP-
14 RESENTATIVE IS ASSOCIATED.

15 (B) "BARGAINING REPRESENTATIVE" MEANS A LABOR ORGANIZATION
16 RECOGNIZED BY AN EMPLOYER OR CERTIFIED BY THE COMMISSION AS THE
17 SOLE AND EXCLUSIVE BARGAINING REPRESENTATIVE OF CERTAIN EMPLOYEES
18 OF THE EMPLOYER.

19 (C) "COMMISSION" MEANS THE EMPLOYMENT RELATIONS COMMISSION
20 CREATED IN SECTION 3 OF ACT NO. 176 OF THE PUBLIC ACTS OF 1939,
21 BEING SECTION 423.3 OF THE MICHIGAN COMPILED LAWS.

22 (D) "LOCKOUT" MEANS THE TEMPORARY WITHHOLDING OF WORK DURING
23 A LABOR DISPUTE BY MEANS OF SHUTTING DOWN THE OPERATION OF THE
24 EMPLOYER FROM A GROUP OF EMPLOYEES IN ORDER TO BRING PRESSURE
25 UPON THE AFFECTED EMPLOYEES OR THE BARGAINING REPRESENTATIVE, OR
26 BOTH, TO ACCEPT THE EMPLOYER'S TERMS OF SETTLEMENT OF THE
27 DISPUTE.

1 (E) "PUBLIC EMPLOYEE" MEANS A PERSON HOLDING A POSITION BY
2 APPOINTMENT OR EMPLOYMENT IN THE GOVERNMENT OF THIS STATE, IN THE
3 GOVERNMENT OF 1 OR MORE OF THE POLITICAL SUBDIVISIONS OF THIS
4 STATE, IN THE PUBLIC SCHOOL SERVICE, IN A PUBLIC OR SPECIAL DIS-
5 TRICT, IN THE SERVICE OF AN AUTHORITY, COMMISSION, OR BOARD, OR
6 IN ANY OTHER BRANCH OF THE PUBLIC SERVICE.

7 (F) "STATE SCHOOL AID FUND" MEANS THE FUND ESTABLISHED PUR-
8 SUANT TO SECTION 11 OF ARTICLE IX OF THE STATE CONSTITUTION OF
9 1963 TO PROVIDE FINANCIAL ASSISTANCE TO SCHOOL DISTRICTS AND
10 INTERMEDIATE SCHOOL DISTRICTS IN THIS STATE.

11 (G) ~~(a)~~ "Strike" means the concerted failure to report for
12 duty, the ~~wilful~~ INTENTIONAL absence from one's position, the
13 stoppage of work, or the abstinence in whole or in part from the
14 full, faithful, and proper performance of the duties of employ-
15 ment ~~—~~ for the purpose of inducing, influencing, or coercing a
16 change in the conditions ~~—~~ or compensation ~~—~~ or the rights,
17 privileges, or obligations of employment. STRIKE INCLUDES AN
18 UNFAIR LABOR PRACTICE STRIKE AND A SYMPATHY STRIKE. ~~This act~~
19 ~~shall not be construed to limit, impair, or affect the right of a~~
20 ~~public employee to the expression or communication of a view,~~
21 ~~grievance, complaint, or opinion on any matter related to the~~
22 ~~conditions or compensation of public employment or their better~~
23 ~~ment, so long as the same is not designed to and does not inter-~~
24 ~~fere with the full, faithful, and proper performance of the~~
25 ~~duties of employment.~~

26 ~~(b) "Commission" means the employment relations commission~~
27 ~~as created in section 3 of Act No. 176 of the Public Acts of~~

1 ~~1939, as amended, being section 423.3 of the Michigan Compiled~~
2 ~~Laws.~~

3 (2) THIS ACT DOES NOT LIMIT, IMPAIR, OR AFFECT THE RIGHT OF
4 A PUBLIC EMPLOYEE TO THE EXPRESSION OR COMMUNICATION OF A VIEW,
5 GRIEVANCE, COMPLAINT, OR OPINION ON ANY MATTER RELATED TO THE
6 CONDITIONS OR COMPENSATION OF PUBLIC EMPLOYMENT OR THEIR BETTER-
7 MENT AS LONG AS THE EXPRESSION OR COMMUNICATION DOES NOT INTER-
8 FERE WITH THE FULL, FAITHFUL, AND PROPER PERFORMANCE OF THE
9 DUTIES OF EMPLOYMENT.

10 Sec. 2. ~~No person holding a position by appointment or~~
11 ~~employment in the government of the state of Michigan, or in the~~
12 ~~government of any 1 or more of the political subdivisions there~~
13 ~~of, or in the public school service, or in any public or special~~
14 ~~district, or in the service of any authority, commission, or~~
15 ~~board, or in any other branch of the public service, hereinafter~~
16 ~~called a "~~ A public employee ~~",~~ shall NOT strike AND A PUBLIC
17 EMPLOYER SHALL NOT INSTITUTE A LOCKOUT IN CONJUNCTION WITH A
18 LABOR DISPUTE. AN EMPLOYER SHALL NOT BE CONSIDERED TO HAVE VIO-
19 LATED THIS SECTION IF THERE IS A TOTAL OR PARTIAL CESSATION OF
20 THE EMPLOYER'S OPERATIONS IN RESPONSE TO A STRIKE HELD IN VIOLA-
21 TION OF THIS SECTION.

22 Sec. 6. (1) Notwithstanding the provisions of any other
23 law, any ~~person holding such a position~~ PUBLIC EMPLOYEE, who
24 ~~—~~ by concerted action with others, and without the lawful
25 approval of his OR HER superior, ~~wilfully~~ INTENTIONALLY absents
26 himself OR HERSELF from his OR HER position, or abstains in whole
27 or in part from the full, faithful, and proper performance of his

1 OR HER duties, ~~for the purpose of inducing, influencing or~~
2 ~~coercing a change in the conditions or compensation, or the~~
3 ~~rights, privileges or obligations of employment~~ shall be
4 ~~deemed~~ CONSIDERED to be on strike. ~~but the~~

5 (2) EXCEPT AS PROVIDED IN SECTION 19, A person, upon
6 request, ~~shall be~~ IS entitled to a determination PURSUANT TO
7 THIS SECTION as to whether he ~~did violate the provisions of~~ OR
8 SHE VIOLATED this act. The request shall be filed in writing,
9 WITHIN 10 DAYS AFTER REGULAR COMPENSATION OF THE EMPLOYEE HAS
10 CEASED OR OTHER DISCIPLINE HAS BEEN IMPOSED, with the officer or
11 body having power to remove or discipline ~~such~~ THE employee.
12 ~~, within 10 days after regular compensation of such employee has~~
13 ~~ceased or other discipline has been imposed. In the event of~~
14 ~~such~~ IF A request IS FILED, the officer or body, ~~shall~~ within
15 10 days OF RECEIPT OF THE REQUEST, SHALL commence a proceeding
16 for the determination of whether the ~~provisions of~~ PUBLIC
17 EMPLOYEE HAS VIOLATED this act. ~~have been violated by the~~
18 ~~public employee,~~ THE PROCEEDING SHALL BE HELD in accordance with
19 the law and regulations appropriate to a proceeding to remove the
20 public employee ~~. The proceedings~~ AND shall be ~~undertaken~~
21 HELD without unnecessary delay. The decision of the ~~proceeding~~
22 OFFICER OR BODY shall be made within 10 days AFTER THE CONCLUSION
23 OF THE PROCEEDING.

24 (3) If the employee involved is ~~held~~ FOUND to have vio-
25 lated this ~~law~~ ACT and his OR HER employment IS terminated or
26 other discipline IS imposed, ~~he~~ THE EMPLOYEE shall have the
27 right of review to the circuit court having jurisdiction of the

1 parties, within 30 days from ~~such~~ THE DATE OF THE decision, for
2 A determination AS TO whether ~~such~~ THE decision is supported by
3 competent, material, and substantial evidence on the whole
4 record.

5 SEC. 8. IF COLLECTIVE BARGAINING AND MEDIATION FAIL TO
6 RESOLVE A LABOR DISPUTE AND EITHER PARTY OR THE COMMISSION
7 REQUESTS FACT-FINDING UNDER SECTION 25 OF ACT NO. 176 OF THE
8 PUBLIC ACTS OF 1939, BEING SECTION 423.25 OF OF THE MICHIGAN
9 COMPILED LAWS, THE FACT-FINDER SHALL BASE HIS OR HER FINDINGS OF
10 FACT AND RECOMMENDATIONS UPON ALL OF THE FOLLOWING FACTORS, AS
11 APPLICABLE:

12 (A) THE LAWFUL AUTHORITY OF THE EMPLOYER.

13 (B) STIPULATIONS OF THE PARTIES.

14 (C) THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINAN-
15 CIAL ABILITY OF THE EMPLOYER TO MEET THOSE NEEDS.

16 (D) COMPARISON OF THE WAGES, HOURS, AND CONDITIONS OF
17 EMPLOYMENT OF THE EMPLOYEES INVOLVED IN THE PROCEEDING WITH THE
18 WAGES, HOURS, AND CONDITIONS OF EMPLOYMENT OF OTHER EMPLOYEES
19 PERFORMING SIMILAR SERVICES IN THE PUBLIC AND PRIVATE SECTORS IN
20 COMPARABLE COMMUNITIES.

21 (E) PRESENT REVENUE LEVELS AND REVENUE SOURCES OF THE
22 EMPLOYER, THE ABILITY OF THE EMPLOYER TO PAY WITHIN THE FRAMEWORK
23 OF THESE REVENUE LEVELS AND REVENUE SOURCES, AND LIMITATIONS ON
24 THE GROWTH OF THESE REVENUE SOURCES.

25 (F) THE OVERALL COMPENSATION PRESENTLY RECEIVED BY THE
26 EMPLOYEES, INCLUDING DIRECT WAGE COMPENSATION, VACATIONS,
27 HOLIDAYS AND OTHER EXCUSED TIME, INSURANCE, PENSIONS, MEDICAL AND

1 HOSPITALIZATION BENEFITS, THE CONTINUITY AND STABILITY OF
2 EMPLOYMENT, AND ALL OTHER BENEFITS RECEIVED.

3 (G) CHANGES IN ANY OF THE CIRCUMSTANCES LISTED IN SUBDIVI-
4 SIONS (A) THROUGH (F) DURING THE PENDENCY OF THE FACT-FINDING
5 PROCEEDINGS.

6 (H) THE APPROPRIATENESS OF THE EMPLOYER ESTABLISHING A CASH
7 RESERVE FUND TO BE USED IN FUTURE YEARS AT THE EMPLOYER'S
8 DISCRETION.

9 (I) FACTORS OTHER THAN THOSE LISTED IN SUBDIVISIONS (A)
10 THROUGH (H) THAT NORMALLY OR TRADITIONALLY ARE TAKEN INTO CONSID-
11 ERATION IN THE DETERMINATION OF WAGES, HOURS, AND CONDITIONS OF
12 EMPLOYMENT THROUGH VOLUNTARY COLLECTIVE BARGAINING, MEDIATION,
13 FACT-FINDING, OR OTHERWISE BETWEEN THE PARTIES, IN THE PUBLIC
14 SERVICE OR IN PRIVATE EMPLOYMENT.

15 SEC. 17. (1) THIS SECTION AND SECTIONS 18 TO 21 APPLY ONLY
16 TO PUBLIC SCHOOL EMPLOYEES AND EMPLOYERS.

17 (2) AS USED IN SECTIONS 18 TO 21:

18 (A) "EMPLOYEE" MEANS A PERSON WHO IS A MEMBER OF A BARGAIN-
19 ING UNIT THAT INCLUDES CLASSROOM TEACHERS EMPLOYED BY A SCHOOL
20 DISTRICT OR INTERMEDIATE SCHOOL DISTRICT ORGANIZED UNDER THE
21 SCHOOL CODE OF 1976, ACT NO. 451 OF THE PUBLIC ACTS OF 1976,
22 BEING SECTIONS 380.1 TO 380.1852 OF THE MICHIGAN COMPILED LAWS.

23 (B) "EMPLOYER" MEANS A SCHOOL BOARD OR AN OFFICER OR AGENT
24 OF A SCHOOL BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL
25 DISTRICT ORGANIZED UNDER THE SCHOOL CODE OF 1976, ACT NO. 451 OF
26 THE PUBLIC ACTS OF 1976.

1 SEC. 18. (1) IF AN EMPLOYER DETERMINES THAT THERE IS A
2 STRIKE IN VIOLATION OF SECTION 2, THE EMPLOYER SHALL NOTIFY THE
3 COMMISSION OF EACH DAY AN EMPLOYEE IS ABSENT WITHOUT EXCUSE FROM
4 WORK OR ABSTAINS IN PART FROM THE PERFORMANCE OF HIS OR HER
5 DUTIES OF EMPLOYMENT ON A SCHEDULED DAY OF WORK, WHETHER OR NOT
6 THE DAY WAS ESTABLISHED AS A DAY OF WORK MUTUALLY BY THE PARTIES
7 IN NEGOTIATIONS OR WAS ESTABLISHED SOLELY BY THE EMPLOYER.

8 (2) IF A BARGAINING REPRESENTATIVE DETERMINES THAT THERE IS
9 A LOCKOUT IN VIOLATION OF SECTION 2, THE BARGAINING REPRESENTA-
10 TIVE SHALL NOTIFY THE COMMISSION OF EACH DAY OF THE APPARENT
11 LOCKOUT.

12 SEC. 19. (1) WITHIN 60 DAYS OF RECEIPT OF A NOTICE MADE
13 PURSUANT TO SECTION 18, THE COMMISSION SHALL CONDUCT A HEARING
14 AND ISSUE ITS FINDINGS. A HEARING CONDUCTED UNDER THIS SUBSEC-
15 TION IS SEPARATE AND DISTINCT FROM AN UNFAIR LABOR PRACTICE PRO-
16 CEEDING CONDUCTED UNDER SECTION 6.

17 (2) IF A MAJORITY OF THE COMMISSION FINDS THAT 1 OR MORE
18 EMPLOYEES WERE ON STRIKE IN VIOLATION OF SECTION 2, THE COMMIS-
19 SION SHALL FINE EACH EMPLOYEE \$100.00 FOR EACH DAY OF THE STRIKE
20 AND THE BARGAINING REPRESENTATIVE OF THOSE EMPLOYEES AN AMOUNT
21 NOT TO EXCEED \$5,000.00 FOR EACH DAY OF THE STRIKE.

22 (3) IF A MAJORITY OF THE COMMISSION FINDS THAT AN EMPLOYER
23 INSTITUTED A LOCKOUT IN VIOLATION OF SECTION 2, THE COMMISSION
24 SHALL FINE THE EMPLOYER AN AMOUNT NOT TO EXCEED \$5,000.00 FOR
25 EACH DAY OF THE LOCKOUT.

1 (4) THE COMMISSION SHALL TRANSMIT MONEY RECEIVED UNDER THIS
2 SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE STATE SCHOOL
3 AID FUND.

4 (5) IF THE COMMISSION DOES NOT RECEIVE PAYMENT OF A FINE
5 IMPOSED UNDER THIS SECTION WITHIN 30 DAYS AFTER THE IMPOSITION OF
6 THE FINE, THE COMMISSION MAY REQUEST THAT THE ATTORNEY GENERAL
7 INSTITUTE COLLECTION PROCEEDINGS.

8 SEC. 20. AN EMPLOYER AND A BARGAINING REPRESENTATIVE SHALL
9 NOT NEGOTIATE THE RECOVERY OF ANY PENALTY IMPOSED UNDER THIS
10 ACT.

11 SEC. 21. A BARGAINING REPRESENTATIVE OR AN AFFILIATED ORGA-
12 NIZATION, OR BOTH, SHALL NOT DIRECTLY OR INDIRECTLY SUBSIDIZE AN
13 EMPLOYEE ENGAGED IN A STRIKE IN VIOLATION OF THIS ACT.

14 SEC. 22. THE COMMISSION SHALL PROMULGATE, AS NECESSARY, NOT
15 LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THIS ACT, RULES TO
16 IMPLEMENT SECTIONS 17 TO 21 PURSUANT TO THE ADMINISTRATIVE PROCE-
17 DURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING
18 SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS.