



HOUSE BILL No. 5095

November 3, 1999, Introduced by Rep. Callahan and referred to the Committee on Employment Relations, Training and Safety.

A bill to provide for compulsory arbitration of labor disputes in the public schools; to provide for the selection of members of arbitration panels; to prescribe the procedures and authority of arbitration panels; and to provide for the enforcement and review of awards of arbitration panels.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (a) "Bargaining representative" means a labor organization
3 recognized by a public school employer or certified by the com-
4 mission as the sole and exclusive bargaining representative of
5 certain employees of the public school employer.

6 (b) "Commission" means the employment relations commission
7 created in section 3 of 1939 PA 176, MCL 423.3.

1 (c) "Intermediate school district" means that term as
2 defined in section 4 of the revised school code, 1976 PA 451, MCL
3 380.4.

4 (d) "Public school academy" means a public school academy or
5 strict discipline academy organized under the revised school
6 code, 1976 PA 451, MCL 380.1 to 380.1852.

7 (e) "Public school employee" means a person employed by a
8 public school employer.

9 (f) "Public school employer" means a public employer that is
10 the board of a school district, intermediate school district, or
11 public school academy, or is the governing board of a joint
12 endeavor or consortium consisting of any combination of school
13 districts, intermediate school districts, or public school
14 academies.

15 (g) "School district" means that term as defined in section
16 6 of the revised school code, 1976 PA 451, MCL 380.6, or a local
17 act school district as defined in section 5 of the revised school
18 code, 1976 PA 451, MCL 380.5.

19 Sec. 2. It is the public policy of this state that in the
20 public schools, where the right of employees to strike is by law
21 prohibited, it is requisite to the high morale of public school
22 employees and the efficient operation of the public schools to
23 afford an alternate, expeditious, effective, and binding proce-
24 dure for the resolution of disputes, and to that end the provi-
25 sions of this act, providing for compulsory arbitration, shall be
26 liberally construed.

1 Sec. 3. (1) If in the course of mediation of a dispute
2 between a public school employer and a bargaining representative
3 of its employees, except a dispute concerning the interpretation
4 or application of an existing collective bargaining agreement,
5 the dispute has not been resolved to the agreement of both par-
6 ties within 30 days of the submission of the dispute to media-
7 tion, or within additional periods to which the parties may
8 agree, the bargaining representative or employer may initiate
9 binding arbitration proceedings under this section by making a
10 written request to the other, and filing a copy with the
11 commission.

12 (2) Within 10 days after a request under subsection (1) is
13 filed with the commission, the public school employer and the
14 bargaining representative each shall choose a delegate to an
15 arbitration panel as provided in this section. The employer and
16 bargaining representative promptly shall advise the other and the
17 commission of its selection.

18 (3) Within 7 days after receiving a request from 1 or both
19 parties, the commission shall select from its panel of arbitra-
20 tors, established under section 5 of 1969 PA 312, MCL 423.235, 3
21 persons as nominees for impartial arbitrator or chairperson of
22 the arbitration panel. Within 5 days after the selection each
23 party may peremptorily strike the name of 1 of the nominees.
24 Within 7 days after this 5-day period, the commission shall des-
25 ignate 1 of the remaining nominees as the impartial arbitrator.

26 (4) Upon the appointment of the impartial arbitrator under
27 subsection (3), the impartial arbitrator shall act as chairperson

1 of the arbitration panel, shall call a hearing to begin within 15
2 days, and shall give reasonable notice to the parties of the time
3 and place of the hearing. The chairperson shall preside over the
4 hearing and shall take testimony. Upon application and for good
5 cause shown, and upon such terms and conditions as are considered
6 just by the arbitration panel, a person, labor organization, or
7 governmental unit having a substantial interest in the hearing
8 may be granted leave to intervene by the arbitration panel. Any
9 oral or documentary evidence and other data considered relevant
10 by the arbitration panel may be received in evidence. The pro-
11 ceedings shall be informal. Technical rules of evidence do not
12 apply and the competency of the evidence shall not be considered
13 impaired because of a violation of technical rules of evidence.
14 A verbatim record of the proceedings shall be made and the chair-
15 person shall arrange for the necessary recording service.
16 Transcripts may be ordered at the expense of the party ordering
17 them, but the transcripts are not necessary for a decision by the
18 arbitration panel. The expense of the proceedings, including a
19 fee to the chairperson, shall be established in advance by the
20 commission and shall be borne equally by each of the parties to
21 the dispute and the state. A delegate who is a public officer or
22 employee shall continue on the payroll of the public employer at
23 his or her usual rate of pay. The hearing conducted by the arbi-
24 tration panel may be adjourned from time to time, but, unless
25 otherwise agreed by the parties, shall be concluded within 30
26 days of the time of its commencement. Actions and rulings of the

1 majority of the arbitration panel constitute the actions and
2 rulings of the arbitration panel.

3 (5) The arbitration panel may administer oaths; may require
4 the attendance of witnesses and the production of books, papers,
5 contracts, agreements, and documents as may be considered by the
6 panel to be material to a just determination of the issues in
7 dispute; and may issue subpoenas. If a person refuses to obey a
8 subpoena, or refuses to be sworn or to testify, or if any wit-
9 ness, party, or attorney is guilty of contempt while in
10 attendance at a hearing, the arbitration panel may, or the attor-
11 ney general if requested by the arbitration panel shall, request
12 the circuit court for the county in which the hearing is being
13 held to issue an appropriate order. Upon proper request, the
14 circuit court shall issue an appropriate order. Failure to obey
15 the order may be punished by the court as contempt.

16 (6) At any time before an arbitration panel renders an
17 award, the chairperson of the arbitration panel, if he or she is
18 of the opinion that it would be useful or beneficial to do so,
19 may remand the dispute to the parties for further collective bar-
20 gaining for a period not to exceed 3 weeks. If the dispute is
21 remanded for further collective bargaining under this subsection,
22 the time provisions of this section are extended for a time
23 period equal to that of the remand. The chairperson of the arbi-
24 tration panel shall notify the commission of the remand.

25 (7) At or before the conclusion of the hearing, the arbitra-
26 tion panel shall identify the economic issues in dispute and
27 shall direct each of the parties to submit, within a time limit

1 prescribed by the panel, to the arbitration panel and to each
2 other the party's last offer of settlement on each economic
3 issue. The determination of the arbitration panel as to the
4 issues in dispute and as to which of these issues are economic
5 issues is conclusive. The arbitration panel, within 30 days
6 after the conclusion of the hearing, or within additional periods
7 agreed by the parties, shall make written findings of fact and
8 issue a written opinion and order upon the issues presented to
9 the panel and upon the record made before the panel, and shall
10 mail or otherwise deliver a true copy of the findings, opinion,
11 and order to the parties and their representatives and to the
12 commission. As to each economic issue, the arbitration panel
13 shall adopt the last offer of settlement that, in the opinion of
14 the arbitration panel, more nearly complies with the applicable
15 factors prescribed in subsection (8). The findings, opinion, and
16 order as to all other issues shall be based on the applicable
17 factors prescribed in subsection (8).

18 (8) If there is no agreement between the parties, or if
19 there is an agreement but the parties have begun negotiations or
20 discussions toward a new agreement or amendment of the existing
21 agreement, and wage rates or other conditions of employment under
22 the proposed new or amended agreement are in dispute, the arbi-
23 tration panel shall base its findings, opinion, and order upon
24 the following factors, as applicable:

25 (a) The lawful authority of the public school employer.

26 (b) Stipulations of the parties.

1 (c) The interests and welfare of the public and the
2 financial ability of the public school employer to meet those
3 costs.

4 (d) Comparison of the wages, hours, and conditions of
5 employment of the employees involved in the arbitration proceed-
6 ing with the wages, hours and conditions of employment of other
7 employees performing similar services for public school employers
8 in comparable communities.

9 (e) The average consumer prices for goods and services, com-
10 monly known as the cost of living.

11 (f) The overall compensation presently received by the
12 employees, including direct wage compensation, vacations, holi-
13 days and other excused time, insurance and pensions, medical and
14 hospitalization benefits, the continuity and stability of employ-
15 ment, and all other benefits received.

16 (g) Changes in any of the circumstances described in subdi-
17 visions (a) to (f) during the pendency of the arbitration
18 proceedings.

19 (h) Other factors, not confined to those listed in
20 subdivisions (a) to (g), that are normally or traditionally taken
21 into consideration in the determination of wages, hours, and con-
22 ditions of employment through voluntary collective bargaining,
23 mediation, fact-finding, arbitration, or otherwise between public
24 school employers and similar employees.

25 Sec. 4. (1) A majority decision of the arbitration panel
26 under section 3, if supported by competent, material, and
27 substantial evidence on the whole record, is final and binding

1 upon the parties and may be enforced at the instance of either
2 party or of the arbitration panel in the circuit court for the
3 county in which the dispute arose or in which a majority of the
4 affected employees reside. The commencement of a new school
5 fiscal year after the initiation of arbitration procedures under
6 this act, but before the issuance or enforcement of the arbitra-
7 tion decision, does not render a dispute moot or otherwise impair
8 the jurisdiction or authority of the arbitration panel or its
9 decision. Increases in rates of compensation or other benefits
10 may be awarded retroactively to the commencement of any period or
11 periods in dispute. The parties, by stipulation, may amend or
12 modify an arbitration award at any time.

13 (2) If the bargaining representative of employees subject to
14 this act willfully disobeys a lawful order of enforcement by a
15 circuit court pursuant to subsection (1), or willfully encourages
16 or offers resistance to the order, whether by a strike or other-
17 wise, the punishment for each day that contempt persists may be a
18 fine fixed in the discretion of the court in an amount not to
19 exceed \$250.00 per day. If a public school employer willfully
20 disobeys a lawful order of enforcement by the circuit court or
21 willfully encourages or offers resistance to the order, the pun-
22 ishment for each day that contempt persists may be a fine fixed
23 at the discretion of the court in an amount not to exceed \$250.00
24 per day to be assessed against the public school employer.

25 Sec. 5. (1) Orders of the arbitration panel under section 3
26 are reviewable by the circuit court for the county in which the

1 dispute arose or in which a majority of the affected employees
2 reside, but only for 1 or more of the following reasons:

3 (a) That the arbitration panel was without or exceeded its
4 jurisdiction.

5 (b) That the order is not supported by competent, material,
6 and substantial evidence on the whole record.

7 (c) That the order was procured by fraud, collusion, or
8 other similar and unlawful means.

9 (2) The pendency of a proceeding for review under this sec-
10 tion does not automatically stay the order of the arbitration
11 panel.

12 Sec. 6. During the pendency of proceedings before the arbi-
13 tration panel under this act, existing wages, hours, and other
14 conditions of employment shall not be changed by action of either
15 party without the consent of the other. A party may consent to
16 such a change without prejudicing the party's rights or position
17 under this act.

18 Sec. 7. Any provision of 1947 PA 336, MCL 423.201 to
19 423.217, regarding fact-finding procedures is inapplicable to
20 disputes subject to arbitration under this act.