

HOUSE BILL No. 5771

January 27, 2010, Introduced by Reps. Amash, Haveman, McMillin and Daley and referred to the Committee on Labor.

A bill to amend 1947 PA 336, entitled

"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,"

by amending sections 1 and 14 (MCL 423.201 and 423.214), section 1 as amended by 1999 PA 204.

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 an employer or certified by the commission as the
4 sole and exclusive bargaining representative of certain employees
5 of the employer.

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

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

5 (d) "Lockout" means the temporary withholding of work from a
6 group of employees by means of shutting down the operation of the
7 employer in order to bring pressure upon the affected employees or
8 the bargaining representative, or both, to accept the employer's
9 terms of settlement of a labor dispute.

10 (e) "Public employee" means a person holding a position by
11 appointment or employment in the government of this state, in the
12 government of 1 or more of the political subdivisions of this
13 state, in the public school service, in a public or special
14 district, in the service of an authority, commission, or board, or
15 in any other branch of the public service, subject to the following
16 exceptions:

17 (i) Beginning March 31, 1997, a person employed by a private
18 organization or entity ~~that~~**WHO** provides services under a time-
19 limited contract with ~~the~~**THIS** state or a political subdivision of
20 ~~the~~**THIS** state **OR WHO RECEIVES A DIRECT OR INDIRECT GOVERNMENT**
21 **SUBSIDY IN HIS OR HER PRIVATE EMPLOYMENT** is not an employee of ~~the~~
22 **THIS** state or that political subdivision, and is not a public
23 employee.

24 (ii) ~~If, within 30 days after the effective date of the~~
25 ~~amendatory act that added this subparagraph,~~ **IF BY APRIL 9, 2000** a
26 public school employer that is the chief executive officer serving
27 in a school district of the first class under part 5A of the

1 revised school code, 1976 PA 451, MCL 380.371 to 380.376, issues an
2 order determining that it is in the best interests of the school
3 district, then a public school administrator employed by a school
4 district that is a school district of the first class under the
5 revised school code, 1976 PA 451, MCL 380.1 to 380.1852, is not a
6 public employee for purposes of this act. The exception under this
7 subparagraph applies to public school administrators employed by
8 that school district after the date of the order described in this
9 subparagraph whether or not the chief executive officer remains in
10 place in the school district. This exception does not prohibit the
11 chief executive officer or board of a school district of the first
12 class or its designee from having informal meetings with public
13 school administrators to discuss wages and working conditions.

14 (f) "Public school academy" means a public school academy or
15 strict discipline academy organized under the revised school code,
16 1976 PA 451, MCL 380.1 to 380.1852.

17 (g) "Public school administrator" means a superintendent,
18 assistant superintendent, chief business official, principal, or
19 assistant principal employed by a school district, intermediate
20 school district, or public school academy.

21 (h) "Public school employer" means a public employer that is
22 the board of a school district, intermediate school district, or
23 public school academy; is the chief executive officer of a school
24 district in which a school reform board is in place under part 5A
25 of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or
26 is the governing board of a joint endeavor or consortium consisting
27 of any combination of school districts, intermediate school

1 districts, or public school academies.

2 (i) "School district" means that term as defined in section 6
3 of the revised school code, 1976 PA 451, MCL 380.6, or a local act
4 school district as defined in section 5 of the revised school code,
5 1976 PA 451, MCL 380.5.

6 (j) "Strike" means the concerted failure to report for duty,
7 the willful absence from one's position, the stoppage of work, or
8 the abstinence in whole or in part from the full, faithful, and
9 proper performance of the duties of employment for the purpose of
10 inducing, influencing, or coercing a change in employment
11 conditions, compensation, or the rights, privileges, or obligations
12 of employment. For employees of a public school employer, strike
13 also includes an action described in this subdivision that is taken
14 for the purpose of protesting or responding to an act alleged or
15 determined to be an unfair labor practice committed by the public
16 school employer.

17 (2) This act does not limit, impair, or affect the right of a
18 public employee to the expression or communication of a view,
19 grievance, complaint, or opinion on any matter related to the
20 conditions or compensation of public employment or their betterment
21 as long as the expression or communication does not interfere with
22 the full, faithful, and proper performance of the duties of
23 employment.

24 Sec. 14. (1) An election shall not be directed in any
25 bargaining unit or any subdivision within which, in the preceding
26 12-month period, a valid election was held. The commission shall
27 determine who is eligible to vote in the election and shall

1 promulgate rules governing the election. In an election involving
2 more than 2 choices, where none of the choices on the ballot
3 receives a majority vote, a runoff election shall be conducted
4 between the 2 choices receiving the 2 largest numbers of valid
5 votes cast in the election. An election shall not be directed in
6 any bargaining unit or subdivision thereof where there is in force
7 and effect a valid collective bargaining agreement which was not
8 prematurely extended and which is of fixed duration. A collective
9 bargaining agreement shall not bar an election upon the petition of
10 persons not parties thereto where more than 3 years have elapsed
11 since the agreement's execution or last timely renewal, whichever
12 was later.

13 (2) AN ELECTION SHALL NOT BE DIRECTED ON A QUESTION OF
14 REPRESENTATION FOR, AND THE COMMISSION OR A PUBLIC EMPLOYER SHALL
15 NOT RECOGNIZE, A BARGAINING UNIT UNDER THIS ACT THAT CONSISTS OF
16 INDIVIDUALS WHO ARE NOT PUBLIC EMPLOYEES. A BARGAINING UNIT THAT IS
17 FORMED OR RECOGNIZED IN VIOLATION OF THIS SUBSECTION IS INVALID AND
18 VOID.

19 Enacting section 1. This amendatory act is curative, reflects
20 the original intent of the legislature, and is retroactive.