



# HOUSE BILL No. 4843

September 22, 1999, Introduced by Reps. DeWeese, Gosselin, Kuipers, Allen, Tabor and Rick Johnson and referred to the Committee on Employment Relations, Training and Safety.

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 2a (MCL 423.201 and 423.202a), section 1 as amended by 1996 PA 543 and section 2a as added by 1994 PA 112.

## 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 ~~Act No. 176 of the Public Acts of 1939,~~  
3 ~~being section 423.3 of the Michigan Compiled Laws~~ 1939 PA 176,  
4 MCL 423.3.

5 (c) "Intermediate school district" means that term as  
6 defined in section 4 of the revised school code, ~~Act No. 451 of~~  
7 ~~the Public Acts of 1976, being section 380.4 of the Michigan~~  
8 ~~Compiled Laws~~ 1976 PA 451, MCL 380.4.

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

14 (e) "Public employee" means a person holding a position by  
15 appointment or employment in the government of this state, in the  
16 government of 1 or more of the political subdivisions of this  
17 state, in the public school service, in a public or special dis-  
18 trict, in the service of an authority, commission, or board, or  
19 in any other branch of the public service. Beginning ~~on the~~  
20 ~~effective date of the amendatory act that added this sentence~~  
21 MARCH 31, 1997, a person employed by a private organization or  
22 entity that provides services under a time-limited contract with  
23 the state or a political subdivision of the state is not an  
24 employee of the state or that political subdivision, and is not a  
25 public employee.

26 (f) "Public school academy" means a public school academy OR  
27 STRICT DISCIPLINE ACADEMY organized under ~~part 6a of Act No. 451~~

1 of the Public Acts of 1976, being sections 380.501 to 380.507 of  
2 the Michigan Compiled Laws THE REVISED SCHOOL CODE, 1976 PA 451,  
3 MCL 380.1 TO 380.1852.

4 (G) "PUBLIC SCHOOL EMPLOYEE" MEANS A PUBLIC EMPLOYEE  
5 EMPLOYED BY A PUBLIC SCHOOL EMPLOYER.

6 (H) ~~(g)~~ "Public school employer" means a public employer  
7 that is the board of a school district, intermediate school dis-  
8 trict, or public school academy, or is the governing board of a  
9 joint endeavor or consortium consisting of any combination of  
10 school districts, intermediate school districts, or public school  
11 academies.

12 (I) ~~(h)~~ "School district" means that term as defined in  
13 section 6 of ~~Act No. 451 of the Public Acts of 1976, being~~  
14 ~~section 380.6 of the Michigan Compiled Laws~~ THE REVISED SCHOOL  
15 CODE, 1976 PA 451, MCL 380.6, or a local act school district as  
16 defined in section 5 of ~~Act No. 451 of the Public Acts of 1976,~~  
17 ~~being section 380.5 of the Michigan Compiled Laws~~ THE REVISED  
18 SCHOOL CODE, 1976 PA 451, MCL 380.5.

19 (J) ~~(i)~~ "Strike" means the concerted failure to report for  
20 duty, the willful absence from one's position, the stoppage of  
21 work, or the abstinence in whole or in part from the full, faith-  
22 ful, and proper performance of the duties of employment for the  
23 purpose of inducing, influencing, or coercing a change in employ-  
24 ment conditions, compensation, or the rights, privileges, or  
25 obligations of employment. For employees of a public school  
26 employer, strike also includes an action described in this  
27 subdivision that is taken for the purpose of protesting or

1 responding to an act alleged or determined to be an unfair labor  
2 practice committed by the public school employer.

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. 2a. (1) If a public school employer ~~alleges~~ HAS  
11 KNOWLEDGE OF FACTS INDICATING that ~~there is~~ a strike by 1 or  
12 more public school employees HAS OCCURRED in violation of  
13 section 2, THE PUBLIC SCHOOL EMPLOYER IMMEDIATELY SHALL NOTIFY  
14 THE COMMISSION OF THE ALLEGED STRIKE AND THE COMMISSION SHALL  
15 PROCEED AS PROVIDED UNDER THIS SECTION. IN ADDITION, IF A PUBLIC  
16 SCHOOL EMPLOYER FAILS TO NOTIFY THE COMMISSION OF AN ALLEGED  
17 STRIKE BY 1 OR MORE OF ITS PUBLIC SCHOOL EMPLOYEES WITHIN 24  
18 HOURS AFTER A STRIKE IS ALLEGED TO HAVE COMMENCED, A PARENT OR  
19 LEGAL GUARDIAN OF A PUPIL ENROLLED IN A SCHOOL OR PROGRAM OPER-  
20 ATED BY THE PUBLIC SCHOOL EMPLOYER WHO BELIEVES THAT A STRIKE HAS  
21 OCCURRED BY 1 OR MORE PUBLIC SCHOOL EMPLOYEES OF THAT PUBLIC  
22 SCHOOL EMPLOYER MAY NOTIFY THE COMMISSION OF THE ALLEGED STRIKE,  
23 AND THE COMMISSION SHALL PROCEED AS PROVIDED IN THIS SECTION.  
24 UPON REQUEST BY THE COMMISSION, the public school employer OR  
25 OTHER PERSON MAKING THE ALLEGATION shall notify the commission of  
26 the full or partial days a public school employee ~~was~~ IS  
27 ALLEGED TO HAVE BEEN engaged in ~~the alleged~~ A strike.

1       (2) If a bargaining representative alleges that there is a  
2       lockout by a public school employer in violation of section 2,  
3       the bargaining representative shall notify the commission of the  
4       full or partial days of the alleged lockout.

5       (3) Within ~~60~~ 7 days after receipt of a notice made pursu-  
6       ant to subsection (1) or (2), the commission shall conduct a  
7       hearing to determine if there has been a violation and shall  
8       issue its decision and order. A hearing conducted under this  
9       subsection is separate and distinct from, and is not subject to  
10      the procedures and timelines of, a proceeding conducted under  
11      section 6. THE COMMISSION SHALL ISSUE ITS FINAL DECISION UNDER  
12      THIS SUBSECTION AND, IF APPLICABLE, IMPOSE THE FINE REQUIRED  
13      UNDER SUBSECTION (4), WITHIN 30 DAYS AFTER THE COMMENCEMENT OF  
14      THE HEARING. THE COMMISSION SHALL CONDUCT A CONSOLIDATED HEARING  
15      FOR ALL AFFECTED PUBLIC SCHOOL EMPLOYEES WHO ARE SIMILARLY SITUA-  
16      TED IF ALL OF THE FOLLOWING APPLY:

17      (A) THE COMMISSION DETERMINES THAT EACH AFFECTED INDIVIDUAL  
18      PUBLIC SCHOOL EMPLOYEE'S DUE PROCESS RIGHTS ARE PROTECTED BY THE  
19      CONSOLIDATED HEARING.

20      (B) THE COMMISSION DETERMINES THAT IT IS IN THE BEST INTER-  
21      ESTS OF THIS STATE TO CONDUCT A CONSOLIDATED HEARING.

22      (C) THE COMMISSION HAS PUBLISHED, IN A NEWSPAPER OF GENERAL  
23      CIRCULATION IN THE TERRITORY SERVED BY THE PUBLIC SCHOOL EMPLOY-  
24      ER, A NOTICE OF THE COMMISSION'S INTENT TO HOLD A CONSOLIDATED  
25      HEARING. THE NOTICE SHALL INCLUDE A STATEMENT OF THE RIGHT OF  
26      OTHER SIMILARLY SITUATED PUBLIC SCHOOL EMPLOYERS TO JOIN THE  
27      HEARING BY NOTIFYING THE COMMISSION WITHIN 10 DAYS AFTER

1 PUBLICATION OF THE NOTICE. THE COMMISSION SHALL AFFORD SIMILARLY  
2 SITUATED PUBLIC SCHOOL EMPLOYEES WITH THIS RIGHT TO JOIN THE CON-  
3 SOLIDATED HEARING.

4 (4) If, after a hearing under subsection (3), a majority of  
5 the commission finds that 1 or more public school employees  
6 engaged in a strike in violation of section 2, the commission  
7 shall fine each public school employee an amount equal to 1 day  
8 of pay for that public school employee for each full or partial  
9 day that he or she engaged in the strike and shall fine the bar-  
10 gaining representative of the public school employee or employees  
11 \$5,000.00 for each full or partial day the public school employee  
12 or employees engaged in the strike.

13 (5) If, after a hearing under subsection (3), a majority of  
14 the commission finds that a public school employer instituted a  
15 lockout in violation of section 2, the commission shall fine the  
16 public school employer \$5,000.00 for each full or partial day of  
17 the lockout and shall fine each member of the public school  
18 employer's governing board \$250.00 for each full or partial day  
19 of the lockout.

20 (6) If the commission imposes a fine against a public school  
21 employee under subsection (4) and the public school employee con-  
22 tinues to be employed by a public school employer, the commission  
23 shall order the public school employer to deduct the fine from  
24 the public school employee's annual salary. The public school  
25 employee's annual salary is the annual salary that is established  
26 in the applicable contract in effect at the time of the strike  
27 or, if no applicable contract is in effect at the time of the

1 strike, in the applicable contract in effect at the time of the  
2 decision and order. However, if no applicable contract is in  
3 effect at either of those times, the public school employee's  
4 annual salary shall be considered to be the annual salary that  
5 applied or would have applied to the public school employee in  
6 the most recent applicable contract in effect before the strike.  
7 A public school employer shall comply promptly with an order  
8 under this subsection. A deduction under this subsection is not  
9 a demotion for the purposes of ~~Act No. 4 of the Extra Session of~~  
10 ~~1937, being sections 38.71 to 38.191 of the Michigan Compiled~~  
11 ~~Laws~~ 1937 (EX SESS) PA 4, MCL 38.71 TO 38.191.

12 (7) The commission shall transmit money received from fines  
13 imposed under this section, and a public school employer shall  
14 transmit money deducted pursuant to an order under  
15 subsection (6), to the state treasurer for deposit in the state  
16 school aid fund established under section 11 of article IX of the  
17 state constitution of 1963.

18 (8) If the commission does not receive payment of a fine  
19 imposed under this section within 30 days after the imposition of  
20 the fine, or if a public school employer does not deduct a fine  
21 from a public school employee's pay pursuant to an order under  
22 subsection (6), the commission shall institute collection  
23 proceedings.

24 (9) Fines imposed under this section are in addition to all  
25 other penalties prescribed by this act and by law.

26 (10) A public school employer may bring an action to enjoin  
27 a strike by public school employees in violation of section 2,

1 and a bargaining representative may bring an action to enjoin a  
2 lockout by a public school employer in violation of section 2, in  
3 the circuit court for the county in which the affected public  
4 school is located. A court having jurisdiction of an action  
5 brought under this subsection shall grant injunctive relief if  
6 the court finds that a strike or lockout has occurred, without  
7 regard to the existence of other remedies, demonstration of  
8 irreparable harm, or other factors. Failure to comply with an  
9 order of the court may be punished as contempt. In addition, the  
10 court shall award court costs and reasonable attorney fees to a  
11 plaintiff who prevails in an action brought under this  
12 subsection.

13 (11) A public school employer shall not provide to a public  
14 school employee or to a board member any compensation or addi-  
15 tional work assignment that is intended to reimburse the public  
16 school employee or board member for a monetary penalty imposed  
17 under this section or that is intended to allow the public school  
18 employee or board member to recover a monetary penalty imposed  
19 under this section.

20 (12) ~~As used in this section, "public school employee"~~  
21 ~~means a person employed by a public school employer.~~ THE COMMIS-  
22 SION SHALL PROMULGATE RULES FOR THE CONSOLIDATED HEARING PROCESS  
23 UNDER SUBSECTION (3) TO ENSURE THAT AN INDIVIDUAL'S DUE PROCESS  
24 RIGHTS ARE PROTECTED. THE RULES SHALL BE PROMULGATED UNDER THE  
25 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO  
26 24.328.