

HOUSE BILL No. 5235

January 26, 2016, Introduced by Reps. Kelly and Price and referred to the Committee on Education.

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; to require certain provisions in collective bargaining agreements; to prescribe means of enforcement and penalties for the violation of the provisions of this act; and to make appropriations,"

by amending sections 2a and 6 (MCL 423.202a and 423.206), section 2a as added and section 6 as amended by 1994 PA 112.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2a. (1) IF A PUBLIC SCHOOL EMPLOYEE ENGAGES IN A STRIKE
2 IN VIOLATION OF SECTION 2, THE SUPERINTENDENT OF PUBLIC INSTRUCTION
3 SHALL NOTIFY THE COMMISSION OF THE FULL OR PARTIAL DAYS THE PUBLIC
4 SCHOOL EMPLOYEE WAS ENGAGED IN THE STRIKE.

5 (2) ~~(1) If a public school employer alleges that there is a~~
6 ~~strike by 1 or more public school employees in violation of section~~
7 ~~2, the~~ IF CONDITIONS CONSTITUTING A STRIKE IN VIOLATION OF SECTION

1 **2 BY 1 OR MORE PUBLIC SCHOOL EMPLOYEES EXIST, A** public school
2 employer shall notify the commission **AND THE SUPERINTENDENT OF**
3 **PUBLIC INSTRUCTION** of the full or partial days a public school
4 employee was engaged in the alleged strike.

5 (3) ~~(2)~~—If a bargaining representative alleges that there is a
6 lockout by a public school employer in violation of section 2, the
7 bargaining representative shall notify the commission of the full
8 or partial days of the alleged lockout.

9 (4) ~~(3)~~ ~~Within 60~~ **NOT MORE THAN 2** days after receipt of a
10 notice made pursuant to subsection (1), ~~or~~ ~~(2)~~, **OR (3)**, the
11 commission shall conduct a hearing to determine if there has been a
12 violation and shall issue its decision and order. **THE HEARING SHALL**
13 **OFFER AN OPPORTUNITY FOR THE BARGAINING REPRESENTATIVE, PUBLIC**
14 **SCHOOL EMPLOYER, OR PUBLIC SCHOOL EMPLOYEE TO OFFER TESTIMONY OR**
15 **OTHER EVIDENCE TO SUPPORT OR CONTEST THE ALLEGATION OF A STRIKE OR**
16 **LOCKOUT.** A hearing conducted under this subsection is separate and
17 distinct from, and is not subject to the procedures and timelines
18 of, a proceeding conducted under section 6.

19 (5) ~~(4)~~—If, after a hearing under subsection ~~(3)~~, ~~(4)~~, a
20 majority of the commission finds that 1 or more public school
21 employees engaged in a strike in violation of section 2, the
22 commission shall fine each public school employee an amount equal
23 to 1 day of pay for that public school employee for each full or
24 partial day that he or she engaged in the strike and shall fine the
25 bargaining representative of the public school employee or
26 employees \$5,000.00 for each full or partial day the public school
27 employee or employees engaged in the strike.

1 (6) ~~(5)~~—If, after a hearing under subsection ~~(3)~~, ~~(4)~~, a
2 majority of the commission finds that a public school employer
3 instituted a lockout in violation of section 2, the commission
4 shall fine the public school employer \$5,000.00 for each full or
5 partial day of the lockout and shall fine each member of the public
6 school employer's governing board \$250.00 for each full or partial
7 day of the lockout.

8 (7) ~~(6)~~—If the commission imposes a fine against a public
9 school employee under subsection ~~(4)~~—~~(5)~~ and the public school
10 employee continues to be employed by a public school employer, the
11 commission shall order the public school employer to deduct the
12 fine from the public school employee's annual salary. The public
13 school employee's annual salary is the annual salary that is
14 established in the applicable contract in effect at the time of the
15 strike or, if no applicable contract is in effect at the time of
16 the strike, in the applicable contract in effect at the time of the
17 decision and order. However, if no applicable contract is in effect
18 at either of those times, the public school employee's annual
19 salary shall be considered to be the annual salary that applied or
20 would have applied to the public school employee in the most recent
21 applicable contract in effect before the strike. A public school
22 employer shall comply promptly with an order under this subsection.
23 A deduction under this subsection is not a demotion for the
24 purposes of ~~Act No. 4 of the Extra Session of 1937, being sections~~
25 ~~38.71 to 38.191 of the Michigan Compiled Laws.1937 (EX SESS) PA 4,~~
26 **MCL 38.71 TO 38.191.**

27 (8) ~~(7)~~—The commission shall transmit money received from

1 fines imposed under this section, and a public school employer
2 shall transmit money deducted pursuant to an order under subsection
3 ~~(6), (7)~~, to the state treasurer for deposit in the state school
4 aid fund established under section 11 of article IX of the state
5 constitution of 1963.

6 (9) ~~(8)~~—If the commission does not receive payment of a fine
7 imposed under this section within 30 days after the imposition of
8 the fine, or if a public school employer does not deduct a fine
9 from a public school employee's pay pursuant to an order under
10 subsection ~~(6), (7)~~, the commission shall institute collection
11 proceedings.

12 (10) ~~(9)~~—Fines imposed under this section are in addition to
13 all other penalties prescribed by this act and by law.

14 (11) ~~(10)~~—A public school employer **OR THE SUPERINTENDENT OF**
15 **PUBLIC INSTRUCTION** may bring an action to enjoin a strike by public
16 school employees in violation of section 2, and a bargaining
17 representative may bring an action to enjoin a lockout by a public
18 school employer in violation of section 2, in the circuit court for
19 the county in which the affected public school is located. ~~A-IF THE~~
20 ~~COMMISSION HAS MADE A DETERMINATION THAT A STRIKE OR LOCKOUT EXISTS~~
21 ~~AFTER A HEARING UNDER SUBSECTION (4), THAT FINDING SHALL NOT BE~~
22 ~~OVERTURNED EXCEPT BY CLEAR AND CONVINCING EVIDENCE. IF THE~~ court
23 having jurisdiction of an action brought under this subsection
24 ~~shall grant injunctive relief if the court finds that a strike or~~
25 ~~lockout has occurred, without regard to the existence of other~~
26 ~~remedies, demonstration of irreparable harm, or other factors.~~
27 ~~Failure to comply with an order of the court may be punished as~~

1 ~~contempt. In addition, the court shall award court costs and~~
2 ~~reasonable attorney fees to a plaintiff who prevails in an action~~
3 ~~brought under this subsection.~~ FINDS THAT CONDITIONS CONSTITUTING A
4 STRIKE OR LOCKOUT IN VIOLATION OF SECTION 2 EXIST AND UNLESS CLEAR
5 AND CONVINCING EVIDENCE HAS SHOWN THAT THE SANCTION WOULD NOT BE
6 EQUITABLE OR THE SANCTION WOULD DUPLICATE A SANCTION IMPOSED BY THE
7 COMMISSION FOR THE SAME ACTIVITY UNDER SUBSECTION (5) OR (6), THE
8 COURT SHALL DO ALL OF THE FOLLOWING:

9 (A) FOR A STRIKE IN VIOLATION OF SECTION 2, ORDER THE
10 BARGAINING REPRESENTATIVE TO PAY A FINE OF \$5,000.00 FOR EACH FULL
11 OR PARTIAL DAY THE PUBLIC SCHOOL EMPLOYEE OR EMPLOYEES ENGAGED IN
12 THE STRIKE AND ORDER EACH PUBLIC SCHOOL EMPLOYEE TO PAY A FINE IN
13 AN AMOUNT EQUAL TO 1 DAY OF PAY FOR THAT PUBLIC SCHOOL EMPLOYEE FOR
14 EACH FULL OR PARTIAL DAY THE PUBLIC SCHOOL EMPLOYEE ENGAGED IN THE
15 STRIKE. FOR A LOCKOUT IN VIOLATION OF SECTION 2, ORDER THE PUBLIC
16 SCHOOL EMPLOYER TO PAY A FINE OF \$5,000.00 FOR EACH FULL OR PARTIAL
17 DAY OF THE LOCKOUT AND ORDER EACH MEMBER OF THE PUBLIC SCHOOL
18 EMPLOYER'S GOVERNING BOARD TO PAY A FINE OF \$250.00 FOR EACH FULL
19 OR PARTIAL DAY OF THE LOCKOUT.

20 (B) ORDER THE PUBLIC SCHOOL EMPLOYEES OR PUBLIC SCHOOL
21 EMPLOYER ACTING IN VIOLATION OF SECTION 2 TO END THE STRIKE OR
22 LOCKOUT.

23 (C) AWARD COSTS AND ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS
24 IN AN ACTION UNDER THIS SUBSECTION.

25 (D) GRANT ADDITIONAL EQUITABLE RELIEF THAT THE COURT FINDS
26 APPROPRIATE.

27 (12) AN ORDER ISSUED UNDER SUBSECTION (11) IS ENFORCEABLE

1 **THROUGH THE COURT'S CONTEMPT POWER.**

2 (13) ~~(11)~~—A public school employer shall not provide to a
3 public school employee or to a board member any compensation or
4 additional work assignment that is intended to reimburse the public
5 school employee or board member for a monetary penalty imposed
6 under this section or that is intended to allow the public school
7 employee or board member to recover a monetary penalty imposed
8 under this section.

9 (14) ~~(12)~~—As used in this section, "public school employee"
10 means a person employed by a public school employer.

11 Sec. 6. (1) Notwithstanding the provisions of any other law, a
12 public employee who, by concerted action with others and without
13 the lawful approval of his or her superior, willfully absents
14 himself or herself from his or her position, or abstains in whole
15 or in part from the full, faithful, and proper performance of his
16 or her duties for the purpose of inducing, influencing, or coercing
17 a change in employment conditions, compensation, or the rights,
18 privileges, or obligations of employment, or a public employee
19 employed by a public school employer who engages in an action
20 described in this subsection for the purpose of protesting or
21 responding to an act alleged or determined to be an unfair labor
22 practice committed by the public school employer, shall be
23 considered to be on strike.

24 (2) Before a public employer may discipline or discharge a
25 public employee for engaging in a strike, the public employee, upon
26 request, is entitled to a determination under this section as to
27 whether he or she violated this act. The request shall be filed in

1 writing, with the officer or body having power to remove or
2 discipline the employee, within 10 days after regular compensation
3 of the employee has ceased or other discipline has been imposed. If
4 a request is filed, the officer or body, within ~~10~~5 days after
5 receipt of the request, shall commence a proceeding for the
6 determination of whether the public employee has violated this act.
7 The proceedings shall be held in accordance with the law and
8 regulations appropriate to a proceeding to remove the public
9 employee and shall be held without unnecessary delay. The decision
10 of the officer or body shall be made within ~~10~~2 days after the
11 conclusion of the proceeding. If the employee involved is found to
12 have violated this act and his or her employment is terminated or
13 other discipline is imposed, the employee has the right of review
14 to the circuit court having jurisdiction of the parties, within 30
15 days from the date of the decision, for a determination as to
16 whether the decision is supported by competent, material, and
17 substantial evidence on the whole record. **A PUBLIC EMPLOYER MAY**
18 **CONSOLIDATE EMPLOYEE HEARINGS UNDER THIS SUBSECTION UNLESS THE**
19 **EMPLOYEE DEMONSTRATES MANIFEST INJUSTICE FROM THE CONSOLIDATION.**
20 This subsection does not apply to a penalty imposed under section
21 2a.

22 Enacting section 1. This amendatory act takes effect 90 days
23 after the date it is enacted into law.