

Act No. 9
Public Acts of 2023
Approved by the Governor
March 24, 2023
Filed with the Secretary of State
March 24, 2023
EFFECTIVE DATE: Sine Die
(91st day after final adjournment of the 2023 Regular Session)

**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Reps. Weiss, Mentzer, Miller, Rheingans, Breen, Morgan, Edwards, Snyder, Rogers, Tyrone Carter, Haadsma, MacDonell, Andrews, Koleszar, Paiz, Tsernoglou, Wegela, Brabec, Liberati, O'Neal, Byrnes, Wilson, McKinney, Skaggs, Hoskins, Shannon, Scott, Glanville, Martus, Conlin, Price, Morse, Grant, Dievendorf, Hood, Churches, Tate, Pohutsky, Hope, Young, Hill, Whitsett, McFall, Fitzgerald, Steckloff, Puri, Neeley, Farhat, Stone, Aiyash and Coffia

ENROLLED HOUSE BILL No. 4004

AN ACT 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 9, 10, and 15 (MCL 423.209, 423.210, and 423.215), as amended by 2014 PA 414.

The People of the State of Michigan enact:

Sec. 9. Public employees may organize together or form, join, or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection; or negotiate or bargain collectively with their public employers through representatives of their own free choice.

Sec. 10. (1) A public employer or an officer or agent of a public employer shall not do any of the following:

(a) Interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed in section 9.

(b) Initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization. A public school employer's use of public school resources to assist a labor organization in collecting dues or service fees from wages of public school employees is a prohibited contribution to the administration of a labor organization. However, a public school employer's collection of dues or service fees pursuant to a collective bargaining agreement that is in effect on March 16, 2012 is not prohibited until the agreement expires or is terminated, extended, or renewed. A public employer may permit employees to confer with a labor organization during working hours without loss of time or pay.

(c) Discriminate in regard to hire, terms, or other conditions of employment to encourage or discourage membership in a labor organization. However, this act or any other law of this state does not preclude a public employer from making an agreement with an exclusive bargaining representative as described in section 11 to require as a condition of employment that all other employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

(d) Discriminate against a public employee because he or she has given testimony or instituted proceedings under this act.

(e) Refuse to bargain collectively with the representatives of its public employees, subject to section 11.

(2) It is the purpose of 1973 PA 25 to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if the requirement is negotiated with the public employer, that all other employees in the bargaining unit share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee that may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

(3) A labor organization or its agents shall not do any of the following:

(a) Restrain or coerce public employees in the exercise of the rights guaranteed in section 9. This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

(b) Restrain or coerce a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(c) Cause or attempt to cause a public employer to discriminate against a public employee in violation of subsection (1)(c).

(d) Refuse to bargain collectively with a public employer, if it is the representative of the public employer's employees, subject to section 11.

(4) By July 1 of each year, each exclusive bargaining representative that represents public employees in this state shall have an independent examiner verify the exclusive bargaining representative's calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year and shall file that verification with the commission. The commission shall make the exclusive bargaining representative's calculations available to the public on the commission's website. The exclusive bargaining representative shall also file a declaration identifying the local bargaining units that are represented. Local bargaining units identified in the declaration filed by the exclusive bargaining representative are not required to file a separate calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment.

(5) A public employer and a bargaining representative may enter into a collective bargaining agreement that requires all public employees in the bargaining unit to share equally in the financial support of the bargaining representative. This act does not, and a law or policy of a local government must not, prohibit or limit an agreement that requires public employees in the bargaining unit, as a condition of continued employment, to pay to the bargaining representative membership dues or service fees. This subsection becomes effective immediately upon, and applies to the extent permitted by, either of the following:

(a) A decision or ruling by the United States Supreme Court that reverses or limits, in whole or in part, *Janus v AFSCME, Council 31*, ___US___; 138 S Ct 2448 (2018).

(b) The ratification of an amendment to the United States Constitution that restores the ability to require, as a condition of employment, a public employee who is not a member of a bargaining representative to pay, under any circumstances, fees, including agency fees, to the bargaining representative.

(6) For fiscal year 2022-2023, \$1,000,000.00 is appropriated to the department of labor and economic opportunity to be expended to do all of the following regarding the 2023 amendatory act that added this sentence:

(a) Respond to public inquiries regarding the amendatory act.

- (b) Provide the commission with sufficient staff and other resources to implement the amendatory act.
- (c) Inform public employers, public employees, and bargaining representatives about changes to their rights and responsibilities under the amendatory act.
- (d) Any other purposes that the director of the department of labor and economic opportunity determines in the director's sole discretion are necessary to implement the amendatory act.

Sec. 15. (1) A public employer shall bargain collectively with the representatives of its employees as described in section 11 and may make and enter into collective bargaining agreements with those representatives. Except as otherwise provided in this section, for the purposes of this section, to bargain collectively is to perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or make a concession.

(2) A public school employer has the responsibility, authority, and right to manage and direct on behalf of the public the operations and activities of the public schools under its control.

(3) Collective bargaining between a public school employer and a bargaining representative of its employees must not include any of the following subjects:

(a) Who is or will be the policyholder of an employee group insurance benefit. This subdivision does not affect the duty to bargain with respect to types and levels of benefits and coverages for employee group insurance. A change or proposed change in a type or to a level of benefit, policy specification, or coverage for employee group insurance must be bargained by the public school employer and the bargaining representative before the change takes effect.

(b) Establishment of the starting day for the school year and of the amount of pupil contact time required to receive full state school aid under section 1284 of the revised school code, 1976 PA 451, MCL 380.1284, and under section 101 of the state school aid act of 1979, 1979 PA 94, MCL 388.1701.

(c) The composition of school improvement committees established under section 1277 of the revised school code, 1976 PA 451, MCL 380.1277.

(d) The decision of whether or not to provide or allow interdistrict or intradistrict open enrollment opportunity in a school district or the selection of grade levels or schools in which to allow an open enrollment opportunity.

(e) The decision of whether or not to act as an authorizing body to grant a contract to organize and operate 1 or more public school academies under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(f) The decision of whether or not to contract with a third party for 1 or more noninstructional support services; or the procedures for obtaining the contract for noninstructional support services other than bidding described in this subdivision; or the identity of the third party; or the impact of the contract for noninstructional support services on individual employees or the bargaining unit. However, this subdivision applies only if the bargaining unit that is providing the noninstructional support services is given an opportunity to bid on the contract for the noninstructional support services on an equal basis as other bidders.

(g) The use of volunteers in providing services at its schools.

(h) Decisions concerning use and staffing of experimental or pilot programs and decisions concerning use of technology to deliver educational programs and services and staffing to provide that technology, or the impact of those decisions on individual employees or the bargaining unit.

(i) Any compensation or additional work assignment intended to reimburse an employee for or allow an employee to recover any monetary penalty imposed under this act.

(j) Any decision made by the public school employer regarding teacher placement, or the impact of that decision on an individual employee or the bargaining unit.

(k) Decisions about the development, content, standards, procedures, adoption, and implementation of the public school employer's policies regarding personnel decisions when conducting a staffing or program reduction or any other personnel determination resulting in the elimination of a position, when conducting a recall from a staffing or program reduction or any other personnel determination resulting in the elimination of a position, or in hiring after a staffing or program reduction or any other personnel determination resulting in the elimination of a position, as provided under section 1248 of the revised school code, 1976 PA 451, MCL 380.1248, any decision made by the public school employer pursuant to those policies, or the impact of those decisions on an individual employee or the bargaining unit.

(l) Decisions about the development, content, standards, procedures, adoption, and implementation of a public school employer's performance evaluation system adopted under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, or under 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the content of a performance evaluation of an employee under those provisions of law, or the impact of those decisions on an individual employee or the bargaining unit.

(m) For public employees whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the development, content, standards, procedures, adoption, and implementation of a policy regarding discharge or discipline of an employee, decisions concerning the discharge or discipline of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit. For public employees whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, a public school employer shall not adopt, implement, or maintain a policy for discharge or discipline of an employee that includes a standard for discharge or discipline that is different than the arbitrary and capricious standard provided under section 1 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

(n) Decisions about the format, timing, or number of classroom observations conducted for the purposes of section 3a of article II of 1937 (Ex Sess) PA 4, MCL 38.83a, decisions concerning the classroom observation of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit.

(o) Decisions about the development, content, standards, procedures, adoption, and implementation of the method of compensation required under section 1250 of the revised school code, 1976 PA 451, MCL 380.1250, decisions about how an employee performance evaluation is used to determine performance-based compensation under section 1250 of the revised school code, 1976 PA 451, MCL 380.1250, decisions concerning the performance-based compensation of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit.

(p) Decisions about the development, format, content, and procedures of the notification to parents and legal guardians required under section 1249a of the revised school code, 1976 PA 451, MCL 380.1249a.

(4) Except as otherwise provided in subsection (3)(f), the matters described in subsection (3) are prohibited subjects of bargaining between a public school employer and a bargaining representative of its employees, and, for the purposes of this act, are within the sole authority of the public school employer to decide.

(5) Each collective bargaining agreement entered into between a public employer and public employees under this act on or after March 28, 2013 must include a provision that allows an emergency manager appointed under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject, modify, or terminate the collective bargaining agreement as provided in the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575. Provisions required by this subsection are prohibited subjects of bargaining under this act.

(6) Collective bargaining agreements under this act may be rejected, modified, or terminated pursuant to the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575. This act does not confer a right to bargain that would infringe on the exercise of powers under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

(7) A unit of local government that enters into a consent agreement under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1) for the term of the consent agreement, as provided in the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

(8) If the charter of a city, village, or township with a population of 500,000 or more requires and specifies the method of selection of a retirant member of the municipality's fire department, police department, or fire and police department pension or retirement board, the inclusion of the retirant member on the board and the method of selection of that retirant member are prohibited subjects of collective bargaining, and any provision in a collective bargaining agreement that purports to modify that charter requirement is void and of no effect.

(9) The following are prohibited subjects of bargaining and are at the sole discretion of the public employer:

(a) A decision as to whether or not the public employer will enter into an intergovernmental agreement to consolidate 1 or more functions or services, to jointly perform 1 or more functions or services, or to otherwise collaborate regarding 1 or more functions or services.

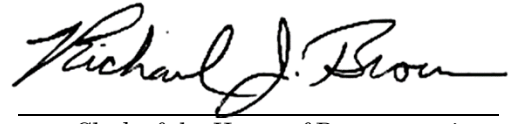
(b) The procedures for obtaining a contract for the transfer of functions or responsibilities under an agreement described in subdivision (a).

(c) The identities of any other parties to an agreement described in subdivision (a).

(10) Subsection (9) does not relieve a public employer of any duty established by law to collectively bargain with its employees as to the effect of a contract described in subsection (9)(a) on its employees.

(11) An agreement with a collective bargaining unit must not require a public employer to pay the costs of an independent examiner verification described in section 10(4).

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



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor