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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 928

Sponsor: Senator Nick Smith

Committee: Human Resources and Senior Citizens

Date Completed: 9-8-88

SUMMARY OF SENATE BILL 928 as introduced 6-21-88:

The bill would amend Public Act 336 of 1947, which prohibits strikes by public employees, to provide for the settlement of labor disputes between public school employers and public school employees and to prescribe the powers and duties of the Employment Relations Commission, employers, employees, bargaining representatives, and fact finders in relation to the disputes. The term "employer" would apply to the school board, or an officer or agent of the board, of a K-12 or intermediate school district organized under the School Code, and "employee" would apply to a person employed by a K-12 or intermediate school district. A "bargaining representative" would be a labor organization recognized by an employer or certified by the Commission as the sole and exclusive bargaining representative of certain employees of the employer. Although the provisions of the bill would apply only to public school employees and employers, and then only until October 1, 1992, any proceedings pending under the bill on June 30, 1992, could continue until completion.

Agreement Modifications

The bill would require a bargaining representative to submit to the employer at least 90 calendar days before the expiration of a collective bargaining agreement a written proposal on each economic and noneconomic issue the representative wished to modify in the agreement. The employer would be required to submit to the representative at least 60 days before expiration of the agreement a proposal on each issue the employer wished to modify. Written proposals to modify the agreement could be submitted after the expiration of these time limits only if the proposing party demonstrated that it was not possible to submit the proposal in a more timely manner.

Mediator/Fact Finder

If a tentative agreement had not been reached on a successor collective bargaining agreement by an employer and bargaining representative at least 30 days before expiration of the agreement and neither party had requested mediation, the Employment Relations Commission would have to appoint a mediator to help the parties resolve their dispute. If an agreement were not reached within 45 days after the agreement expired and neither party requested fact-finding, the Commission would have to appoint a fact finder to make recommendations on the matters in dispute.

A fact finder would have to base his or her findings and recommendations on all of the following factors, as applicable:

- The lawful authority of the employer.
- Stipulations of the parties.
- Interests and welfare of the public and the financial ability of the employer to meet those needs.
- A comparison of the wages, hours, and conditions of employment of the employees involved in the proceeding and those of other employees performing similar services in the public and private sectors in comparable communities.
- Current revenue levels and sources of the employer, the employer's ability to pay within the framework of those levels and sources, and limits on the growth of the sources.
- The overall compensation currently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- Changes in any of the circumstances listed above during the fact-finding proceedings.
- Other factors that normally or traditionally are taken into account in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, "or otherwise between the parties", in public service or private employment.

Withholding Pay

For each day an employee was absent from work on a scheduled workday or abstained in part from performing his or her duties during a labor dispute in violation of the Act, regardless of whether the workday had been established solely by the employer or mutually by the parties in negotiations, an employer would be required to withhold a day's wages and fringe benefits from that employee, without instituting the procedures specified in Section 6 of the Act to determine a violation of the Act. The money would have to be deposited in a noninterest bearing escrow account, and the employer would have to notify the Commission of the withholding and the reasons for the withholding within 10 days after the withholding was made.

Within 60 days after receiving notice of a withholding, the Commission would have to hold a hearing and issue its findings as to whether the affected employee was absent from work in violation of the Act. If a majority of the Commission found the employee to be absent in violation of the Act, the escrow agent immediately would have to transmit the escrowed money to the State Treasurer for

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deposit in the State School Aid Fund. If the employee were not found to be in violation of the Act, the escrowed money would be transmitted to the employee and any other person affected by the withholding. A hearing held under these provisions would be separate and distinct from an unfair labor practice hearing.

If, in order to comply with the 180-day student instruction requirement in the School Code and School Aid Act, an employer were required to reschedule one or more days of work that were lost because of a labor dispute, employees who were found by the Commission to have been absent from work or to have abstained from their duties in violation of the Act would have to work any rescheduled days at no added salary or fringe benefit cost to the employer.

Lockout

The bill would prohibit an employer from instituting a lockout in conjunction with a labor dispute. The bill would define "lockout" as "the temporary withholding of work during a labor dispute by means of shutting down the operation of the employer from a group of employees in order to bring pressure upon the affected employees or the bargaining representative, or both, to accept the employer's terms of settlement of the dispute", and would prescribe a fine of up to \$5,000 for each day a lockout persisted. The employer would have to transmit payment of the fine to the State Treasurer for deposit in the State School Aid Fund and give proof of the payment to the Commission. An employer would not be considered to have violated the prohibition against a lockout if there were a total or partial cessation of the employer's operations in response to a strike, including an unfair labor practice strike, held in violation of the Act.

Miscellaneous

The bill would prohibit an employer and a bargaining representative from negotiating the recovery of any penalty imposed under the bill, and would prohibit bargaining representatives and affiliated organizations from directly or indirectly subsidizing an employee engaged in an illegal strike. An "affiliated organization" would include any national or state labor organization with which a local bargaining representative was associated.

The Commission would be required to promulgate any rules necessary to implement the provisions of the bill.

MCL 423.201 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

Since mediation and fact finding would be statutorily required, there would be an increase in associated costs for both public school districts and school employee labor associations. Personal service savings (e.g., salaries and benefits) normally retained by the employer would be paid into the State School Aid Fund and restitution would not be a negotiable item. Penalties would be placed on employers who locked out employees but the significance of this \$5,000-per-day assessment would vary from district to district given their size and financial condition.

Fiscal Analyst: K. Lindquist

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.