

SENATE BILL No. 928

June 21, 1988, Introduced by Senators N. SMITH, DILLINGHAM, DI NELLO, CROUSEY, WELBORN and SHINKLE and referred to the Committee on Human Resources and Senior Citizens.

A bill to amend the title and sections 1 and 6 of Act No. 336 of the Public Acts of 1947, entitled as amended

"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,"

being sections 423.201 and 423.206 of the Michigan Compiled Laws; and to add sections 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1 and 6 of Act No. 336 of
2 the Public Acts of 1947, being sections 423.201 and 423.206 of
3 the Michigan Compiled Laws, are amended and sections 17, 18, 19,
4 20, 21, 22, 23, 24, 25, 26, and 27 are added to read as follows:

TITLE

1
2 An act to prohibit strikes by certain public employees; to
3 provide review from disciplinary action with respect thereto; to
4 provide for the mediation of grievances and the holding of elec-
5 tions; to declare and protect the rights and privileges of public
6 employees; ~~and~~ TO PROVIDE FOR THE SETTLEMENT OF LABOR DISPUTES
7 BETWEEN PUBLIC SCHOOL EMPLOYERS AND PUBLIC SCHOOL EMPLOYEES; to
8 prescribe ~~means of enforcement~~ THE POWERS AND DUTIES OF THE
9 EMPLOYMENT RELATIONS COMMISSION, EMPLOYERS, EMPLOYEES, BARGAINING
10 REPRESENTATIVES, AND CERTAIN OTHER PERSONS; and TO PRESCRIBE
11 penalties. ~~for the violation of the provisions of this act.~~

12 Sec. 1. (1) As used in this act:

13 (A) "AFFILIATED ORGANIZATION" MEANS ANY LABOR ORGANIZATION
14 AT THE STATE OR NATIONAL LEVEL WITH WHICH A LOCAL BARGAINING REP-
15 RESENTATIVE IS ASSOCIATED.

16 (B) "BARGAINING REPRESENTATIVE" MEANS A LABOR ORGANIZATION
17 RECOGNIZED BY AN EMPLOYER OR CERTIFIED BY THE COMMISSION AS THE
18 SOLE AND EXCLUSIVE BARGAINING REPRESENTATIVE OF CERTAIN EMPLOYEES
19 OF THE EMPLOYER.

20 (C) "COMMISSION" MEANS THE EMPLOYMENT RELATIONS COMMISSION
21 CREATED IN SECTION 3 OF ACT NO. 176 OF THE PUBLIC ACTS OF 1939,
22 BEING SECTION 423.3 OF THE MICHIGAN COMPILED LAWS.

23 (D) "LOCKOUT" MEANS THE TEMPORARY WITHHOLDING OF WORK DURING
24 A LABOR DISPUTE BY MEANS OF SHUTTING DOWN THE OPERATION OF THE
25 EMPLOYER FROM A GROUP OF EMPLOYEES IN ORDER TO BRING PRESSURE
26 UPON THE AFFECTED EMPLOYEES OR THE BARGAINING REPRESENTATIVE, OR

1 BOTH, TO ACCEPT THE EMPLOYER'S TERMS OF SETTLEMENT OF THE
2 DISPUTE.

3 (E) "STATE SCHOOL AID FUND" MEANS THE FUND ESTABLISHED PUR-
4 SUANT TO SECTION 11 OF ARTICLE IX OF THE STATE CONSTITUTION OF
5 1963 TO ASSIST FINANCIALLY SCHOOL DISTRICTS AND INTERMEDIATE
6 SCHOOL DISTRICTS IN THIS STATE.

7 (F) ~~(a)~~ "Strike" means the concerted failure to report for
8 duty, the ~~wilful~~ WILLFUL absence from one's position, the stop-
9 page of work, or the abstinence in whole or in part from the
10 full, faithful, and proper performance of the duties of employ-
11 ment, for the purpose of inducing, influencing, or coercing a
12 change in the conditions, or compensation, or the rights, privi-
13 leges, or obligations of employment. STRIKE INCLUDES AN UNFAIR
14 LABOR PRACTICE STRIKE. ~~This act shall not be construed to limit,~~
15 ~~impair, or affect the right of a public employee to the expres-~~
16 ~~sion or communication of a view, grievance, complaint, or opinion~~
17 ~~on any matter related to the conditions or compensation of public~~
18 ~~employment or their betterment, so long as the same is not~~
19 ~~designed to and does not interfere with the full, faithful, and~~
20 ~~proper performance of the duties of employment.~~

21 ~~(b) "Commission" means the employment relations commission~~
22 ~~as created in section 3 of Act No. 176 of the Public Acts of~~
23 ~~1939, as amended, being section 423.3 of the Michigan Compiled~~
24 ~~Laws.~~

25 (2) THIS ACT SHALL NOT BE CONSTRUED TO LIMIT, IMPAIR, OR
26 AFFECT THE RIGHT OF A PUBLIC EMPLOYEE TO THE EXPRESSION OR
27 COMMUNICATION OF A VIEW, GRIEVANCE, COMPLAINT, OR OPINION ON ANY

1 MATTER RELATED TO THE CONDITIONS OR COMPENSATION OF PUBLIC
2 EMPLOYMENT OR THEIR BETTERMENT AS LONG AS THE STRIKE IS NOT
3 DESIGNED TO AND DOES NOT INTERFERE WITH THE FULL, FAITHFUL, AND
4 PROPER PERFORMANCE OF THE DUTIES OF EMPLOYMENT.

5 Sec. 6. (1) Notwithstanding the provisions of any other
6 law, any ~~person holding such a position~~ PUBLIC EMPLOYEE who, by
7 concerted action with others, and without the lawful approval of
8 his OR HER superior, ~~wilfully~~ WILLFULLY absents himself OR
9 HERSELF from his OR HER position, or abstains in whole or in part
10 from the full, faithful, and proper performance of his OR HER
11 duties for the purpose of inducing, influencing, or coercing a
12 change in the WAGES, HOURS, OR conditions ~~or compensation~~ OF
13 EMPLOYMENT, or the rights, privileges, or obligations of
14 employment, shall be ~~deemed~~ CONSIDERED to be on strike. ~~but~~
15 ~~the~~ HOWEVER, THAT person, upon request, shall be entitled to a
16 determination as to whether he ~~did violate the provisions of~~ OR
17 SHE VIOLATED this act. ~~The~~

18 (2) EXCEPT AS PROVIDED IN SECTION 21, THE request DESCRIBED
19 IN SUBSECTION (1) shall be filed in writing, WITHIN 10 DAYS AFTER
20 REGULAR COMPENSATION OF THE EMPLOYEE HAS CEASED OR OTHER DISCI-
21 PLINE HAS BEEN IMPOSED, with the officer or body having power to
22 remove or discipline ~~such~~ THE employee. ~~, within 10 days~~
23 ~~after regular compensation of such employee has ceased or other~~
24 ~~discipline has been imposed. In the event of such~~ IF A request
25 IS FILED, the officer or body, ~~shall~~ within 10 days OF RECEIPT
26 OF THE REQUEST, SHALL commence a proceeding for the determination
27 of whether the ~~provisions of~~ PUBLIC EMPLOYEE HAS VIOLATED this

1 act. ~~have been violated by the public employee,~~ THE PROCEEDING
2 SHALL BE HELD in accordance with the law and regulations appro-
3 priate to a proceeding to remove the public employee ~~. The~~
4 ~~proceedings~~ AND shall be ~~undertaken~~ HELD without unnecessary
5 delay. The decision of the ~~proceeding~~ OFFICER OR BODY shall be
6 made within 10 days AFTER THE CONCLUSION OF THE PROCEEDING.

7 (3) If the employee involved is ~~held~~ FOUND to have vio-
8 lated this ~~law~~ ACT and his OR HER employment IS terminated or
9 other discipline IS imposed, ~~he~~ THE EMPLOYEE shall have the
10 right of review to the circuit court having jurisdiction of the
11 parties, within 30 days from ~~such~~ THE DATE OF THE decision, for
12 A determination AS TO whether ~~such~~ THE decision is supported by
13 competent, material, and substantial evidence on the whole
14 record.

15 SEC. 17. (1) SECTIONS 17 TO 26 APPLY ONLY TO PUBLIC SCHOOL
16 EMPLOYEES AND EMPLOYERS AND SHALL APPLY ONLY UNTIL OCTOBER 1,
17 1992. HOWEVER, PROCEEDINGS PENDING UNDER SECTIONS 18 TO 26 ON
18 JUNE 30, 1992 MAY CONTINUE UNTIL COMPLETION.

19 (2) AS USED IN SECTIONS 18 TO 26:

20 (A) "EMPLOYEE" MEANS A PERSON EMPLOYED BY A PUBLIC K TO 12
21 OR INTERMEDIATE SCHOOL DISTRICT ORGANIZED UNDER THE SCHOOL CODE
22 OF 1976, ACT NO. 451 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS
23 380.1 TO 380.1852 OF THE MICHIGAN COMPILED LAWS.

24 (B) "EMPLOYER" MEANS THE SCHOOL BOARD OF A K TO 12 OR INTER-
25 MEDIATE SCHOOL DISTRICT ORGANIZED UNDER THE SCHOOL CODE OF 1976,
26 ACT NO. 451 OF THE PUBLIC ACTS OF 1976, OR AN OFFICER OR AGENT OF
27 THE SCHOOL BOARD.

1 SEC. 18. (1) A BARGAINING REPRESENTATIVE SHALL SUBMIT NOT
2 LESS THAN 90 CALENDAR DAYS BEFORE THE EXPIRATION OF THE COLLEC-
3 TIVE BARGAINING AGREEMENT A WRITTEN PROPOSAL TO THE EMPLOYER ON
4 EACH ECONOMIC AND NONECONOMIC ISSUE THAT THE BARGAINING REPRES-
5 TATIVE IS SEEKING TO MODIFY IN THE AGREEMENT.

6 (2) AN EMPLOYER SHALL SUBMIT NOT LESS THAN 60 CALENDAR DAYS
7 BEFORE THE EXPIRATION OF THE COLLECTIVE BARGAINING AGREEMENT A
8 WRITTEN PROPOSAL TO THE BARGAINING REPRESENTATIVE ON EACH ECO-
9 NOMIC AND NONECONOMIC ISSUE THAT THE EMPLOYER IS SEEKING TO
10 MODIFY IN THE AGREEMENT.

11 (3) AN EMPLOYER OR BARGAINING REPRESENTATIVE MAY ONLY SUBMIT
12 A WRITTEN PROPOSAL TO MODIFY THE COLLECTIVE BARGAINING AGREEMENT
13 AFTER THE EXPIRATION OF THE TIME LIMITATIONS SET FORTH IN SUBSEC-
14 TIONS (1) AND (2) IF THE PROPOSING PARTY DEMONSTRATES THAT IT WAS
15 NOT POSSIBLE TO SUBMIT THE PROPOSAL IN A MORE TIMELY MANNER.

16 SEC. 19. (1) IF A TENTATIVE AGREEMENT HAS NOT BEEN REACHED
17 BY AN EMPLOYER AND BARGAINING REPRESENTATIVE ON A SUCCESSOR COL-
18 LECTIVE BARGAINING AGREEMENT AT LEAST 30 CALENDAR DAYS BEFORE THE
19 EXPIRATION OF THE AGREEMENT AND NEITHER PARTY HAS REQUESTED MEDI-
20 ATION, THE COMMISSION SHALL APPOINT A MEDIATOR TO ASSIST THE PAR-
21 TIES IN THE RESOLUTION OF THEIR DISPUTE.

22 (2) IF A TENTATIVE AGREEMENT HAS NOT BEEN REACHED BY AN
23 EMPLOYER AND BARGAINING REPRESENTATIVE ON A SUCCESSOR COLLECTIVE
24 BARGAINING AGREEMENT WITHIN 45 CALENDAR DAYS AFTER THE EXPIRATION
25 OF THE AGREEMENT AND NEITHER PARTY HAS REQUESTED FACT-FINDING,
26 THE COMMISSION SHALL APPOINT A FACT FINDER TO MAKE
27 RECOMMENDATIONS IN THE MATTERS IN DISPUTE.

1 SEC. 20. A FACT FINDER APPOINTED PURSUANT TO SECTION 19
2 SHALL BASE HIS OR HER FINDINGS AND RECOMMENDATIONS UPON ALL OF
3 THE FOLLOWING FACTORS, AS APPLICABLE:

4 (A) THE LAWFUL AUTHORITY OF THE EMPLOYER.

5 (B) STIPULATIONS OF THE PARTIES.

6 (C) THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINAN-
7 CIAL ABILITY OF THE EMPLOYER TO MEET THOSE NEEDS.

8 (D) COMPARISON OF THE WAGES, HOURS, AND CONDITIONS OF
9 EMPLOYMENT OF THE EMPLOYEES INVOLVED IN THE PROCEEDING WITH THE
10 WAGES, HOURS, AND CONDITIONS OF EMPLOYMENT OF OTHER EMPLOYEES
11 PERFORMING SIMILAR SERVICES IN THE PUBLIC AND PRIVATE SECTORS IN
12 COMPARABLE COMMUNITIES.

13 (E) PRESENT REVENUE LEVELS AND REVENUE SOURCES OF THE
14 EMPLOYER, THE ABILITY OF THE EMPLOYER TO PAY WITHIN THE FRAMEWORK
15 OF THESE REVENUE LEVELS AND REVENUE SOURCES, AND LIMITATIONS ON
16 THE GROWTH OF THESE REVENUE SOURCES.

17 (F) THE OVERALL COMPENSATION PRESENTLY RECEIVED BY THE
18 EMPLOYEES, INCLUDING DIRECT WAGE COMPENSATION, VACATIONS, HOLI-
19 DAYS AND OTHER EXCUSED TIME, INSURANCE, PENSIONS, MEDICAL AND
20 HOSPITALIZATION BENEFITS, THE CONTINUITY AND STABILITY OF EMPLOY-
21 MENT, AND ALL OTHER BENEFITS RECEIVED.

22 (G) CHANGES IN ANY OF THE CIRCUMSTANCES LISTED IN SUBDIVI-
23 SIONS (A) THROUGH (F) DURING THE PENDENCY OF THE FACT-FINDING
24 PROCEEDINGS.

25 (H) SUCH OTHER FACTORS NOT CONFINED TO THOSE LISTED IN SUB-
26 DIVISIONS (A) THROUGH (G) THAT NORMALLY OR TRADITIONALLY ARE
27 TAKEN INTO CONSIDERATION IN THE DETERMINATION OF WAGES, HOURS,

1 AND CONDITIONS OF EMPLOYMENT THROUGH VOLUNTARY COLLECTIVE
2 BARGAINING, MEDIATION, FACT-FINDING, OR OTHERWISE BETWEEN THE
3 PARTIES, IN THE PUBLIC SERVICE OR IN PRIVATE EMPLOYMENT.

4 SEC. 21. (1) FOR EACH DAY AN EMPLOYEE IS ABSENT FROM
5 EMPLOYMENT ON A SCHEDULED DAY OF WORK OR ABSTAINS IN PART FROM
6 THE PERFORMANCE OF HIS OR HER DUTIES OF EMPLOYMENT IN THE COURSE
7 OF A LABOR DISPUTE IN VIOLATION OF SECTION 2, WHETHER OR NOT THE
8 DAY WAS ESTABLISHED AS A DAY OF WORK MUTUALLY BY THE PARTIES IN
9 NEGOTIATIONS OR WAS ESTABLISHED SOLELY BY THE EMPLOYER, AN
10 EMPLOYER SHALL WITHHOLD FROM THE WAGES OF THE EMPLOYEE, WITHOUT
11 INSTITUTING THE PROCEDURES SET FORTH IN SECTION 6, THE COST OF A
12 DAY'S WAGES AND FRINGE BENEFITS FOR THAT EMPLOYEE.

13 (2) AN EMPLOYER SHALL DEPOSIT ANY MONEY WITHHELD PURSUANT TO
14 SUBSECTION (1) IN A NONINTEREST BEARING ESCROW ACCOUNT.

15 (3) AN EMPLOYER, WITHIN 10 DAYS AFTER A WITHHOLDING MADE
16 PURSUANT TO SUBSECTION (1), SHALL NOTIFY THE COMMISSION OF AND
17 THE REASONS FOR THE WITHHOLDING.

18 SEC. 22. (1) WITHIN 60 DAYS OF RECEIPT OF NOTICE OF A WITH-
19 HOLDING MADE PURSUANT TO SECTION 21, THE COMMISSION SHALL CONDUCT
20 A HEARING AND ISSUE ITS FINDINGS AS TO WHETHER THE AFFECTED
21 EMPLOYEE WAS ABSENT FROM EMPLOYMENT ON A SCHEDULED DAY OF WORK OR
22 ABSTAINED IN PART FROM THE PERFORMANCE OF HIS OR HER DUTIES OF
23 EMPLOYMENT IN THE COURSE OF A LABOR DISPUTE IN VIOLATION OF
24 SECTION 2.

25 (2) IF A MAJORITY OF THE COMMISSION FINDS THAT AN EMPLOYEE
26 WAS ABSENT FROM EMPLOYMENT ON A SCHEDULED DAY OF WORK OR
27 ABSTAINED IN PART FROM THE PERFORMANCE OF HIS OR HER DUTIES OF

1 EMPLOYMENT IN THE COURSE OF A LABOR DISPUTE IN VIOLATION OF
2 SECTION 2, THE ESCROW AGENT SHALL IMMEDIATELY TRANSMIT THE MONEY
3 HELD IN ESCROW UNDER SECTION 21 TO THE STATE TREASURER FOR
4 DEPOSIT IN THE STATE SCHOOL AID FUND.

5 (3) IF A MAJORITY OF THE COMMISSION FINDS THAT AN EMPLOYEE
6 WAS NOT ABSENT FROM EMPLOYMENT ON A SCHEDULED DAY OF WORK AND DID
7 NOT ABSTAIN IN PART FROM THE PERFORMANCE OF HIS OR HER DUTIES OF
8 EMPLOYMENT IN THE COURSE OF A LABOR DISPUTE IN VIOLATION OF
9 SECTION 2, THE ESCROW AGENT SHALL IMMEDIATELY TRANSMIT THE MONEY
10 HELD IN ESCROW UNDER SECTION 21 TO THE AFFECTED EMPLOYEE AND ANY
11 OTHER PERSON AFFECTED BY THE WITHHOLDING.

12 (4) A HEARING CONDUCTED UNDER THIS SECTION IS SEPARATE AND
13 DISTINCT FROM AN UNFAIR LABOR PRACTICE HEARING.

14 SEC. 23. IF AN EMPLOYER IS REQUIRED TO RESCHEDULE 1 OR MORE
15 DAYS OF WORK THAT WERE LOST DUE TO A LABOR DISPUTE IN ORDER TO
16 COMPLY WITH THE 180-DAY STUDENT INSTRUCTION REQUIREMENT OF
17 SECTION 1284 OF THE SCHOOL CODE OF 1976, ACT NO. 451 OF THE
18 PUBLIC ACTS OF 1976, BEING SECTION 380.1284 OF THE MICHIGAN
19 COMPILED LAWS, AND OF SECTION 101 OF THE STATE SCHOOL AID ACT OF
20 1979, ACT NO. 94 OF THE PUBLIC ACTS OF 1979, BEING SECTION
21 388.1701 OF THE MICHIGAN COMPILED LAWS, THE EMPLOYEES WHO WERE
22 FOUND BY THE COMMISSION UNDER SECTION 22 TO HAVE BEEN ABSENT FROM
23 EMPLOYMENT ON A SCHEDULED DAY OF WORK OR TO HAVE ABSTAINED IN
24 PART FROM THE PERFORMANCE OF HIS OR HER DUTIES OF EMPLOYMENT IN
25 VIOLATION OF SECTION 2 SHALL WORK ANY RESCHEDULED DAYS OF WORK AT
26 NO ADDED SALARY OR FRINGE BENEFIT COST TO THE EMPLOYER.

1 SEC. 24. (1) AN EMPLOYER SHALL NOT INSTITUTE A LOCKOUT IN
2 CONJUNCTION WITH A LABOR DISPUTE.

3 (2) THE COMMISSION SHALL FINE AN EMPLOYER WHO VIOLATES THIS
4 SECTION AN AMOUNT NOT TO EXCEED \$5,000.00 FOR EACH DAY OF THE
5 LOCKOUT.

6 (3) AN EMPLOYER SHALL TRANSMIT PAYMENT OF A FINE IMPOSED
7 UNDER THIS SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE
8 STATE SCHOOL AID FUND, ALONG WITH PROOF OF THAT PAYMENT TO THE
9 COMMISSION.

10 (4) AN EMPLOYER SHALL NOT BE CONSIDERED TO HAVE VIOLATED
11 THIS SECTION IF THERE IS A TOTAL OR PARTIAL CESSATION OF THE
12 EMPLOYER'S OPERATIONS IN RESPONSE TO A STRIKE HELD IN VIOLATION
13 OF THIS ACT.

14 SEC. 25. AN EMPLOYER AND A BARGAINING REPRESENTATIVE SHALL
15 NOT NEGOTIATE THE RECOVERY OF ANY PENALTY IMPOSED UNDER THIS ACT.

16 SEC. 26. A BARGAINING REPRESENTATIVE OR AN AFFILIATED ORGA-
17 NIZATION, OR BOTH, SHALL NOT DIRECTLY OR INDIRECTLY SUBSIDIZE AN
18 EMPLOYEE ENGAGED IN A STRIKE IN VIOLATION OF THIS ACT.

19 SEC. 27. THE COMMISSION SHALL PROMULGATE, AS NECESSARY,
20 RULES TO IMPLEMENT SECTIONS 17 TO 26 PURSUANT TO THE ADMINISTRA-
21 TIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF
22 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED
23 LAWS.