



**House  
Legislative  
Analysis  
Section**

Manufacturer's Bank Building, 12th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**SCHOOL EMPLOYEES: RIGHT TO STRIKE**

House Bill 4250  
Sponsor: Rep. William Keith  
Committee: Labor

MAY 16 1990

Complete to 4-2-90

**A SUMMARY OF HOUSE BILL 4250 AS INTRODUCED 2-21-89**

House Bill 4250 would amend the Public Employment Relations Act to provide a limited right to strike for public school employees (K-12 and intermediate). However, the duty of a public employer to bargain collectively would not require that employer to negotiate on powers delegated to the public employer by law. A labor organization could not strike or encourage a strike on behalf of persons not covered by the same contract.

Public school employees could not strike unless both the school board and the school employees had gone through voluntary mediation and the Employment Relations Commission had determined that an impasse had been reached according to the following guidelines: one party requested determination of whether impasse had been reached; the issues in dispute were suitable for arbitration; and the last position of each party had been presented to the commission. After the commission had determined that an impasse had been reached, a public hearing would be called to report the circumstances surrounding the impasse. The commission would report on whether or not each side had bargained in good faith, and each side would have the opportunity to represent its position. Upon request from either the employer or the employees' representative, the commission would obtain from the superintendent of public instruction a statement of the best possible estimate of the financial resources of the employer. The statement would be made public. Upon determination of an impasse, the following steps would be taken:

- a) The employer or the employees' representative could file a petition of arbitration with the commission. The commission would certify each party's position and the issues to be considered and would fix the time and place of a hearing within 20 days after appointing an arbitrator. If both parties could not agree upon an arbitrator, within ten days after the petition for arbitration was filed, the commission would select one. However, either party could request a three-member arbitration panel with one delegate chosen by each party and a chairperson selected by the two delegates or appointed by the commission in case of a disagreement.
- b) The arbitrator would have the authority to administer oaths and issue subpoenas enforceable by circuit court order. The arbitrator would assume jurisdiction over issues certified by the commission, and could remand the dispute to the parties at any time for up to three weeks of further collective bargaining. The arbitrator could also permit a person, association, labor organization, or governmental agency or department to intervene, provided that they had a substantial interest in resolving the impasse.
- c) Within 30 days after the conclusion of the hearing or a longer time period agreed to by both parties, the arbitrator would make written findings of fact and issue an order for each issue certified by the commission. The arbitrator's order would be sent to the employer, the

employees' representative, the commission and any intervening party. The arbitrator's order would incorporate the last offer of settlement that most nearly complied with the following factors: the employer's obligation to conduct its operations within statutory limits, the good faith efforts of the parties to reach agreement, the financial resources of the employer, comparisons with wages and working conditions for persons employed in comparable employment in other communities, the interests of the students and the public, total compensation presently received by the employees (including fringe benefits), and other relevant factors.

- d) The two disputing parties would have ten days to consider the order. If neither party had taken action within ten days, the order would be considered final and binding.
- e) If either party rejected the order, both parties would engage in at least ten days intensive bargaining to resolve the disputed issues voluntarily.
- f) If the disputed issues could not be resolved after ten days of intensive bargaining, and one of the parties accepted the order, the order would be final and binding upon both parties. If the disputing parties decided prior to arbitration that the arbitrator's decision would be final or if the order became final due to neither party taking action, the economic issues would apply retroactively and non-economic issues would become effective on the date the new contract was signed.
- g) If, after ten days of intensive bargaining, neither party agreed to the arbitrator's order, a majority of the members of the employees' bargaining unit could approve a strike by secret ballot in an election supervised by the commission. The employees' representative would have to give at least ten days advance notice of the strike to the employer and to the commission. The circuit court could restrain a strike in case of violence, irreparable injury, breach of peace, or illegality. A strike would be immediately terminated if the employer accepted the arbitrator's order at any time after the ten days intensive bargaining requirement had been met.

Arbitration hearings would be open to the public according to the provisions of the Open Meetings Act.

The disputing parties could agree on certified issues or on the terms of a contract at any time during the course of arbitration. A contract would have to be executed and ratification would require a majority vote of both school board members and bargaining unit members, or by the bargaining committee if so authorized by the labor organization. If a new contract was not ratified by the time the existing contract expired, the existing contract would be extended until a new contract was ratified, or until the school employees went on strike.

An order of the arbitrator could be reviewed in circuit court only if the arbitrator exceeded his jurisdiction, if the order was not supported by material, substantive and competent evidence or if the order was procured by fraud or collusion. The arbitrator could also permit a person, association, labor organization, or governmental agency or department that had a substantial interest in the resolution of the impasse to intervene in the hearing.

The disputing parties would be required to make a good faith effort to comply with the following guidelines:

- a) Selection of negotiators by April 1.
- b) Preliminary meetings to prepare agendas by April 15.
- c) A written proposal for a contract submitted to the employer by the employee's representative by May 1.
- d) A written response and counter proposal submitted to the employee's representative containing revenue estimates based on millage levies and the state school aid recommendations not later than May 15.
- e) Commencement of negotiations by May 25.
- f) Resolution of non-economic issues and identification of unresolved economic issues with no new issues of any type to be introduced by July 1.
- g) Revised proposals from the employer on economic issues based on possible new millage levies or legislative action on state aid within ten days after the new determinations had been made.
- h) Execution of a contract by August 1.
- i) Ratification of a contract by August 15.
- j) Request for mediation, if necessary, by September 1.
- k) Request for arbitration, if necessary, by October 1.

If a strike prohibited a school district from fulfilling the 180 days minimum attendance requirement, a striking employee would have to forfeit 1/180th or one day's proportion of his or her annual compensation, whichever was less, for each day the 180-day requirement had not been fulfilled. If disputed, the commission would determine the exact amount of the forfeiture. The school year would end on or before the third Friday in June, and the 180 day requirement would not include Saturdays, Sundays, holidays, strike days or professional development days. In addition, the school year would have to include at least ten vacation days after the first two weeks and before the last two weeks of the school year.

The arbitrator would receive a reasonable fee, established by the commission. Payment of the arbitrator's fees would be shared by the employer, the employees' representative and the state. If a public officer or employee, the arbitrator would continue on the payroll of the public employer at his or her usual rate of pay.

Violation of this act would be a misdemeanor punishable by a fine of up to \$500 and/or imprisonment of up to three months. If a violation of an injunction, order, decree or judgment issued in accordance with this act occurred, the guilty bargaining agent would forfeit and pay to the state a civil penalty of between \$50 and \$100 per bargaining unit member. A separate penalty would be assessed for each violation and a separate violation would accrue for each day the conduct continued.

The provisions of the bill would expire June 30, 1989, except that proceedings then pending could continue until completion.

MCL 423.202 et al.