

HOUSE BILL No. 4166

February 7, 1991, Introduced by Rep. Keith and referred to the Committee on Education.

A bill to amend the title and section 15 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 section 423.215 of the Michigan Compiled Laws; and to add sections 8, 8a, 8b, 8c, 8d, 8e, 8f, 8g, and 8h.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 15 of Act No. 336 of the
2 Public Acts of 1947, being section 423.215 of the Michigan
3 Compiled Laws, are amended and sections 8, 8a, 8b, 8c, 8d, 8e,
4 8f, 8g, and 8h 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 THOSE EMPLOYEES; to provide for the mediation of grievances, THE
5 BINDING FACT FINDING OF CERTAIN ISSUES IN COLLECTIVE BARGAINING,
6 and the holding of elections; to declare and protect the rights
7 and privileges of public employees; and to prescribe means of
8 enforcement and penalties for the violation of ~~the provisions~~
9 ~~of~~ this act.

10 SEC. 8. (1) WHEN THE PARTIES TO A COLLECTIVE BARGAINING
11 AGREEMENT ARE NOT ABLE AFTER GOOD FAITH BARGAINING AND MEDIATION
12 TO RESOLVE 1 OR MORE ISSUES IN DISPUTE, A PARTY TO THE DISPUTE OR
13 THE COMMISSION MAY INITIATE FACT FINDING PROCEEDINGS PURSUANT TO
14 R 423.431 OF THE MICHIGAN ADMINISTRATIVE CODE.

15 (2) IF IT APPEARS TO THE COMMISSION AFTER A REVIEW OF THE
16 APPLICATION FOR FACT FINDING AND ANSWER TO THE APPLICATION THAT A
17 HEARING ON THE ISSUES IN DISPUTE IS WARRANTED, THE COMMISSION
18 SHALL APPOINT A FACT FINDER AND SERVE UPON EACH OF THE PARTIES A
19 NOTICE OF THE PERSON APPOINTED.

20 (3) AFTER RECEIPT OF NOTICE OF APPOINTMENT, THE FACT FINDER
21 SHALL ISSUE AND SERVE UPON EACH OF THE PARTIES A NOTICE OF
22 HEARING. THE FACT FINDER MAY AMEND OR WITHDRAW A NOTICE OF HEAR-
23 ING AT ANY TIME BEFORE THE CLOSE OF THE HEARING.

24 SEC. 8A. (1) A FACT FINDING HEARING SHALL BE PUBLIC, BUT
25 THE FACT FINDER, FOR GOOD CAUSE, MAY LIMIT ATTENDANCE AT THE
26 HEARING TO THE IMMEDIATE PARTIES TO THE DISPUTE.

1 (2) A PARTY MAY APPEAR AT A FACT FINDING HEARING IN PERSON,
2 BY COUNSEL, OR BY OTHER REPRESENTATIVE; MAY CALL, EXAMINE, AND
3 CROSS-EXAMINE WITNESSES; AND MAY INTRODUCE INTO THE RECORD DOCU-
4 MENTARY OR OTHER EVIDENCE.

5 (3) IN THE DISCRETION OF THE FACT FINDER, A PARTY MAY INTRO-
6 DUCE INTO EVIDENCE STIPULATIONS OF FACT.

7 (4) AN OBJECTION TO THE CONDUCT OF A FACT FINDING HEARING,
8 INCLUDING, BUT NOT LIMITED TO, AN OBJECTION TO AN INTRODUCTION OF
9 EVIDENCE, MAY BE ORAL OR WRITTEN, MAY BE ACCOMPANIED BY A SHORT
10 STATEMENT OF THE GROUNDS FOR THE OBJECTION, AND SHALL BE INCLUDED
11 IN THE RECORD.

12 (5) A PARTY AT WHOSE REQUEST A WITNESS IS SUBPOENAED BEFORE
13 A FACT FINDER SHALL PAY THE WITNESS BEFORE HE OR SHE TESTIFIES
14 THE SAME FEES AND MILEAGE THAT ARE PAID TO A WITNESS IN THE CIR-
15 CUIT COURT.

16 SEC. 8B. (1) A FACT FINDER SHALL INQUIRE FULLY INTO EACH
17 MATTER THAT IS NECESSARY TO ENABLE HIM OR HER TO MAKE RECOMMENDA-
18 TIONS CONCERNING EACH ISSUE IN DISPUTE.

19 (2) A FACT FINDER MAY DO ALL OF THE FOLLOWING:

20 (A) HOLD 1 OR MORE PREHEARING CONFERENCES FOR SETTLEMENT OR
21 CLARIFICATION OF THE ISSUES IN DISPUTE.

22 (B) REMAND THE DISPUTE TO THE PARTIES FOR FURTHER COLLECTIVE
23 BARGAINING FOR A PERIOD NOT TO EXCEED 10 DAYS.

24 (C) DISPOSE OF PROCEDURAL REQUESTS, MOTIONS, OR SIMILAR
25 MATTERS.

26 (D) TAKE OFFICIAL NOTICE OF GENERALLY RECOGNIZED FACTS. A
27 FACT FINDER SHALL NOTIFY EACH PARTY EITHER BEFORE OR DURING THE

1 HEARING OF THE MATERIAL THAT IS NOTICED, AND EACH PARTY SHALL BE
2 AFFORDED AN OPPORTUNITY TO CONTEST THE FACTS THAT ARE NOTICED.

3 (E) TAKE OR CAUSE DEPOSITIONS TO BE TAKEN.

4 (F) GRANT APPLICATIONS FOR SUBPOENAS, SUBPOENA WITNESSES,
5 ADMINISTER OATHS AND AFFIRMATIONS, EXAMINE WITNESSES, RECEIVE
6 RELEVANT TESTIMONY AND EVIDENCE, RULE UPON OFFERS OF PROOF, AND
7 INTRODUCE INTO THE RECORD DOCUMENTARY OR OTHER RELEVANT
8 EVIDENCE.

9 (G) REGULATE THE COURSE OF A HEARING AND, IF APPROPRIATE OR
10 NECESSARY, EXCLUDE PERSONS OR COUNSEL FROM THE HEARING FOR CON-
11 TEMPTUOUS CONDUCT.

12 (H) CONTINUE OR ADJOURN A HEARING TO A LATER DATE.

13 (I) ORDER A HEARING REOPENED BEFORE ISSUANCE OF HIS OR HER
14 FACT FINDING REPORT.

15 (J) TAKE ANY OTHER ACTION NECESSARY AND AUTHORIZED BY RULES
16 OF THE COMMISSION.

17 SEC. 8C. (1) UPON REQUEST, A PARTY TO A FACT FINDING HEAR-
18 ING MAY HAVE A REASONABLE PERIOD OF TIME AT THE CLOSE OF THE
19 HEARING FOR ORAL ARGUMENT, WHICH SHALL BECOME PART OF THE
20 RECORD.

21 (2) UPON REQUEST MADE BEFORE THE CLOSE OF THE HEARING, A
22 PARTY MAY FILE A BRIEF WITH THE FACT FINDER WHO MAY ESTABLISH A
23 REASONABLE TIME FOR THE FILING. THE FACT FINDER MAY DIRECT THE
24 FILING OF BRIEFS WHEN THE FILING IS, IN HIS OR HER OPINION, WAR-
25 RANTED BY THE NATURE OF THE PROCEEDINGS OR THE PARTICULAR ISSUES
26 INVOLVED.

1 SEC. 8D. (1) AFTER THE CLOSE OF A FACT FINDING HEARING, THE
2 FACT FINDER SHALL PREPARE A FACT FINDING REPORT THAT SHALL
3 CONTAIN THE FOLLOWING:

4 (A) A STATEMENT OF FINDINGS OF FACT AND CONCLUSIONS UPON ALL
5 MATERIAL ISSUES PRESENTED AT THE HEARING.

6 (B) RECOMMENDATIONS WITH RESPECT TO EACH ISSUE IN DISPUTE.

7 (C) THE REASONS AND BASIS FOR THE FINDINGS OF FACT, CONCLU-
8 SIONS, AND RECOMMENDATIONS. HOWEVER, THE PARTIES MAY WAIVE THE
9 REQUIREMENTS OF THIS SUBDIVISION, AND THE FACT FINDER MAY THEN
10 ISSUE A REPORT CONTAINING ONLY ITEMS SET FORTH IN SUBDIVISIONS
11 (A) AND (B).

12 (2) THE FACT FINDER SHALL BASE HIS OR HER FACT FINDING
13 REPORT UPON ALL OF THE FOLLOWING FACTORS, AS APPLICABLE:

14 (A) THE LAWFUL AUTHORITY OF THE EMPLOYER.

15 (B) STIPULATIONS OF THE PARTIES.

16 (C) THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINAN-
17 CIAL ABILITY OF THE PUBLIC EMPLOYER TO MEET THOSE COSTS.

18 (D) COMPARISON OF THE WAGES, HOURS, AND CONDITIONS OF
19 EMPLOYMENT OF THE EMPLOYEES INVOLVED IN THE FACT FINDING PROCEED-
20 ING WITH THE WAGES, HOURS, AND CONDITIONS OF EMPLOYMENT OF OTHER
21 EMPLOYEES PERFORMING SIMILAR SERVICES AND WITH OTHER EMPLOYEES
22 GENERALLY:

23 (i) IN PUBLIC EMPLOYMENT IN COMPARABLE COMMUNITIES.

24 (ii) IN PRIVATE EMPLOYMENT IN COMPARABLE COMMUNITIES.

25 (E) THE AVERAGE CONSUMER PRICES FOR GOODS AND SERVICES, COM-
26 MONLY KNOWN AS THE COST OF LIVING.

1 (F) THE OVERALL COMPENSATION PRESENTLY RECEIVED BY THE
2 EMPLOYEES, INCLUDING DIRECT WAGE COMPENSATION, VACATIONS,
3 HOLIDAYS AND OTHER EXCUSED TIME, INSURANCE AND PENSIONS, MEDICAL
4 AND HOSPITALIZATION BENEFITS, THE CONTINUITY AND STABILITY OF
5 EMPLOYMENT, AND ALL OTHER BENEFITS RECEIVED.

6 (G) CHANGES IN ANY OF THE CIRCUMSTANCES LISTED IN
7 SUBDIVISIONS (A) THROUGH (F) DURING THE PENDENCY OF THE FACT
8 FINDING PROCEEDING.

9 (H) OTHER FACTORS THAT ARE NORMALLY OR TRADITIONALLY TAKEN
10 INTO CONSIDERATION IN THE DETERMINATION OF WAGES, HOURS, AND CON-
11 DITIONS OF EMPLOYMENT THROUGH VOLUNTARY COLLECTIVE BARGAINING,
12 MEDIATION, FACT FINDING, ARBITRATION, OR OTHERWISE BETWEEN THE
13 PARTIES, IN THE PUBLIC SERVICE OR IN PRIVATE EMPLOYMENT.

14 (3) THE FACT FINDER SHALL FILE A COPY OF HIS OR HER FACT
15 FINDING REPORT WITH THE COMMISSION AND AT THE SAME TIME SERVE A
16 COPY ON EACH OF THE PARTIES.

17 SEC. 8E. (1) EACH PARTY TO THE DISPUTE HAS 10 DAYS AFTER
18 RECEIPT OF THE FACT FINDING REPORT DESCRIBED IN SECTION 8D IN
19 WHICH TO CONSIDER THE REPORT.

20 (2) IF EITHER PARTY DOES NOT TAKE ANY ACTION WITHIN 10 DAYS
21 AFTER RECEIPT OF THE FACT FINDER'S REPORT, THE RECOMMENDATIONS OF
22 THE FACT FINDER, IF SUPPORTED BY COMPETENT, MATERIAL, AND SUB-
23 STANTIAL EVIDENCE ON THE WHOLE RECORD, SHALL BE CONSIDERED
24 ACCEPTED AND ARE FINAL AND BINDING UPON BOTH PARTIES.

25 (3) IF EITHER PARTY REJECTS ANY OF THE RECOMMENDATIONS OF
26 THE FACT FINDER WITHIN 10 DAYS AFTER RECEIPT OF THE FACT FINDER'S
27 REPORT, THE REJECTING PARTY SHALL NOTIFY THE COMMISSION AND THE

1 OTHER PARTY OF THE SPECIFIC ISSUES OF DISAGREEMENT AND THE
2 REASONS FOR REJECTION OF THE RECOMMENDATIONS. BOTH PARTIES SHALL
3 THEN ENGAGE, IF NECESSARY, IN AT LEAST, BUT NOT MORE THAN, 10
4 DAYS OF INTENSIVE COLLECTIVE BARGAINING UNDER THE SUPERVISION OF
5 THE COMMISSION TO RESOLVE VOLUNTARILY THE ISSUES OF
6 DISAGREEMENT.

7 (4) THE FACT FINDER SHALL AMEND HIS OR HER FACT FINDING
8 REPORT TO REFLECT EACH AGREEMENT THE PARTIES REACH DURING THE
9 10-DAY BARGAINING PERIOD DESCRIBED IN SUBSECTION (3). EACH
10 AGREEMENT REACHED BY THE PARTIES AND INCORPORATED INTO THE FACT
11 FINDING REPORT IS FINAL AND BINDING UPON BOTH PARTIES. IN ADDI-
12 TION, THE RECOMMENDATION OF THE FACT FINDER, IF SUPPORTED BY COM-
13 PETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD,
14 IS FINAL AND BINDING UPON BOTH PARTIES FOR EACH ISSUE OF DIS-
15 AGREEMENT THAT THE PARTIES ARE NOT ABLE TO RESOLVE DURING THE
16 10-DAY BARGAINING PERIOD.

17 (5) IN ADDITION TO THE SANCTION IMPOSED BY SECTION 16, A
18 PERSON WHO VIOLATES THE COLLECTIVE BARGAINING REQUIREMENT OF THIS
19 SECTION IS RESPONSIBLE FOR A CIVIL VIOLATION AND MAY BE LIABLE
20 FOR A CIVIL FINE OF NOT MORE THAN \$500.00.

21 SEC. 8F. EACH AGREEMENT REACHED BY THE PARTIES AND EACH
22 RECOMMENDATION OF THE FACT FINDER THAT BECOMES FINAL AND BINDING
23 UPON THE PARTIES UNDER SECTION 8E MAY BE ENFORCED, AT THE
24 INSTANCE OF EITHER PARTY OR OF THE FACT FINDER, IN THE CIRCUIT
25 COURT FOR THE COUNTY IN WHICH THE DISPUTE AROSE OR IN WHICH A
26 MAJORITY OF THE AFFECTED EMPLOYEES RESIDE. THE COMMENCEMENT OF A
27 NEW FISCAL YEAR FOR THE PUBLIC EMPLOYER AFTER THE INITIATION OF

1 FACT FINDING PROCEDURES UNDER THIS ACT, BUT BEFORE THE ISSUANCE
2 OF THE FACT FINDING REPORT, OR ITS ENFORCEMENT, DOES NOT RENDER A
3 DISPUTE MOOT OR OTHERWISE IMPAIR THE JURISDICTION OR AUTHORITY OF
4 THE FACT FINDER OR HIS OR HER FACT FINDING REPORT. INCREASES IN
5 RATES OF COMPENSATION OR OTHER BENEFITS MAY BE AWARDED RETROAC-
6 TIVELY TO THE COMMENCEMENT OF ANY PERIOD IN DISPUTE.

7 SEC. 8G. IF A PUBLIC EMPLOYER SUBJECT TO THIS ACT OR AN
8 EMPLOYEE ORGANIZATION RECOGNIZED PURSUANT TO THIS ACT AS THE BAR-
9 GAINING REPRESENTATIVE OF EMPLOYEES SUBJECT TO THIS ACT WILLFULLY
10 DISOBEYS A LAWFUL ORDER OF ENFORCEMENT BY THE CIRCUIT COURT PUR-
11 SUANT TO SECTION 8F, OR WILLFULLY ENCOURAGES OR OFFERS RESISTANCE
12 TO AN ORDER, THE BEHAVIOR SHALL BE CONSIDERED CONTEMPT OF COURT.
13 THE CONTEMPT IS PUNISHABLE FOR EACH DAY THAT THE BEHAVIOR PER-
14 SISTS BY A FINE FIXED IN THE DISCRETION OF THE CIRCUIT COURT IN
15 AN AMOUNT NOT TO EXCEED \$250.00 PER DAY.

16 SEC. 8H. A RECOMMENDATION OF A FACT FINDER THAT BECOMES
17 FINAL AND BINDING PURSUANT TO SECTION 8E IS REVIEWABLE BY THE
18 CIRCUIT COURT FOR THE COUNTY IN WHICH THE DISPUTE AROSE OR IN
19 WHICH A MAJORITY OF THE AFFECTED EMPLOYEES RESIDE, BUT ONLY FOR
20 REASONS THAT THE FACT FINDER WAS WITHOUT OR EXCEEDED HIS OR HER
21 JURISDICTION; THE RECOMMENDATION IS NOT SUPPORTED BY COMPETENT,
22 MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD; OR THE
23 RECOMMENDATION WAS PROCURED BY FRAUD, COLLUSION, OR OTHER SIMILAR
24 AND UNLAWFUL MEANS. THE PENDENCY OF A PROCEEDING FOR REVIEW DOES
25 NOT AUTOMATICALLY STAY THE RECOMMENDATIONS OF THE FACT FINDER.

26 Sec. 15. A public employer shall bargain collectively with
27 the representatives of its employees as defined in section 11 and

1 ~~is authorized to make and~~ MAY enter into collective bargaining
2 agreements with ~~such~~ THOSE representatives. For ~~the~~ purposes
3 of this section, to bargain collectively is the performance of
4 the mutual obligation of the employer and the representative of
5 the employees to meet at reasonable times and confer in good
6 faith with respect to wages, hours, and other terms and condi-
7 tions of employment, or the negotiation of an agreement ~~or~~ or
8 any question arising ~~thereunder~~ UNDER THE AGREEMENT, and the
9 execution of a written contract, ordinance, or resolution incor-
10 porating any agreement reached if requested by either party. ~~or~~
11 ~~but such~~ HOWEVER, EXCEPT AS PROVIDED IN SECTION 8E, THIS obliga-
12 tion does not compel either party to agree to a proposal or
13 require the making of a concession.