



HOUSE BILL No. 5128

October 14, 1993, Introduced by Reps. DeLange, Horton, Bandstra, Dalman, Dobb, Jaye, Munsell and Walberg and referred to the Committee on Labor.

A bill to amend sections 9, 10, 11, and 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 sections 423.209, 423.210, 423.211, and 423.215 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 9, 10, 11, and 15 of Act No. 336 of the
2 Public Acts of 1947, being sections 423.209, 423.210, 423.211,
3 and 423.215 of the Michigan Compiled Laws, are amended to read as
4 follows:

5 Sec. 9. (1) ~~It shall be lawful for~~ SUBJECT TO SUBSECTION
6 (2), public employees ~~to~~ MAY organize together or ~~to~~ form,

1 join, or assist in labor organization; ~~to~~ MAY engage in
 2 lawful concerted activities for the purpose of collective negoti-
 3 ation or bargaining or other mutual aid and protection; ~~, or to~~
 4 AND MAY negotiate or bargain collectively with their public
 5 employers through representatives of their own free choice.

6 (2) SUBSECTION (1) DOES NOT EXTEND TO PUBLIC EMPLOYEES WHO
 7 ARE EMPLOYED IN A MANAGERIAL, SUPERVISORY, OR CONFIDENTIAL CAPAC-
 8 ITY BY A PUBLIC EMPLOYER DESCRIBED IN SECTION 15(2).

9 Sec. 10. (1) It ~~shall be~~ IS unlawful for a public
 10 employer or an officer or agent of a public employer TO DO ANY OF
 11 THE FOLLOWING:

12 (a) ~~to interfere~~ INTERFERE with, restrain, or coerce
 13 public employees in the exercise of their rights guaranteed in
 14 section 9. ~~+~~

15 (b) ~~to initiate~~ INITIATE, create, dominate, contribute to,
 16 or interfere with the formation or administration of any labor
 17 organization. ~~+- Provided, That~~ THIS SUBDIVISION DOES NOT
 18 PROHIBIT a public employer ~~shall not be prohibited~~ from permit-
 19 ting employees to confer with it during working hours without
 20 loss of time or pay. ~~+~~

21 (c) ~~to discriminate~~ DISCRIMINATE in regard to hire, terms,
 22 or other conditions of employment in order to encourage or dis-
 23 courage membership in a labor organization. ~~+- Provided further,~~
 24 ~~That nothing in~~ HOWEVER, this act or ~~in~~ any OTHER law of this
 25 state ~~shall~~ DOES NOT preclude a public employer from making an
 26 agreement with an exclusive bargaining representative as defined
 27 in section 11 to require as a condition of employment that all

1 employees in the bargaining unit, NOT INCLUDING EMPLOYEES WHO
 2 CHOOSE UNDER SECTION 11(3) NOT TO BE PART OF THE BARGAINING UNIT,
 3 pay to the exclusive bargaining representative a service fee
 4 equivalent to the amount of dues uniformly required of members of
 5 the exclusive bargaining representative. ~~—~~

6 (d) ~~to discriminate~~ DISCRIMINATE against a public employee
 7 because he OR SHE has given testimony or instituted proceedings
 8 under this act. ~~— or —~~

9 (e) ~~to refuse~~ SUBJECT TO SECTION 11, REFUSE to bargain
 10 collectively with the representatives of its public employees. ~~—~~
 11 ~~subject to the provisions of section 11.~~

12 (2) It is the purpose of ~~this~~ THE 1973 amendatory act to
 13 reaffirm the continuing public policy of this state that the sta-
 14 bility and effectiveness of labor relations in the public sector
 15 require, if such requirement is negotiated with the public
 16 employer, that all employees in the bargaining unit shall share
 17 fairly in the financial support of their exclusive bargaining
 18 representative by paying to the exclusive bargaining representa-
 19 tive a service fee ~~which~~ THAT may be equivalent to the amount
 20 of dues uniformly required of members of the exclusive bargaining
 21 representative.

22 (3) It ~~shall be~~ IS unlawful for a labor organization or
 23 its agents TO DO ANY OF THE FOLLOWING:

24 (a) ~~to restrain~~ RESTRAIN or coerce EITHER OF THE
 25 FOLLOWING: ~~(i) public~~

26 (i) PUBLIC employees in the exercise of the rights
 27 guaranteed in section 9. ~~— Provided, That~~ HOWEVER, this

1 ~~subdivision shall~~ SUBPARAGRAPH DOES not impair the right of a
 2 labor organization to prescribe its own rules with respect to the
 3 acquisition or retention of membership ~~therein, or (ii) a~~ IN
 4 THE LABOR ORGANIZATION.

5 (ii) A public employer in the selection of its representa-
 6 tives for the purposes of collective bargaining or the adjustment
 7 of grievances. ~~+~~

8 (b) ~~to cause~~ CAUSE or attempt to cause a public employer
 9 to discriminate against a public employee in violation of
 10 ~~subdivision (c) of~~ subsection ~~(1), or~~ (1)(C).

11 (c) ~~to refuse~~ REFUSE to bargain collectively with a public
 12 employer ~~, provided it~~ IF THE LABOR ORGANIZATION is the repre-
 13 sentative of the public employer's employees ~~subject to~~ UNDER
 14 section 11.

15 Sec. 11. (1) ~~Representatives~~ SUBJECT TO SUBSECTIONS (2)
 16 AND (3), THE REPRESENTATIVE designated or selected for purposes
 17 of collective bargaining by the majority of the public employees
 18 in a unit appropriate for ~~such purposes, shall be~~ COLLECTIVE
 19 BARGAINING IS the exclusive ~~representatives~~ REPRESENTATIVE of
 20 all the public employees in ~~such~~ THE unit for the purposes of
 21 collective bargaining in respect to rates of pay, wages, hours of
 22 employment or other conditions of employment, and shall be so
 23 recognized by the public employer. ~~+~~ ~~Provided, That any~~

24 (2) AN individual employee at any time may present griev-
 25 ances to his employer and have the grievances adjusted, without
 26 intervention of the bargaining representative, if the adjustment
 27 is not inconsistent with the terms of a collective bargaining

1 contract or agreement then in effect ~~, provided that~~ AND IF the
2 bargaining representative has been given opportunity to be
3 present at such adjustment.

4 (3) A PROFESSIONAL EMPLOYEE OF A PUBLIC EMPLOYER THAT IS A
5 SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR CHARTER PUBLIC
6 SCHOOL, OR OF A PUBLIC EMPLOYER THAT IS A JOINT ENDEAVOR OR CON-
7 SORTIUM CONSISTING OF ANY COMBINATION OF THOSE, MAY CHOOSE NOT TO
8 BE REPRESENTED BY THE REPRESENTATIVE DESCRIBED IN SUBSECTION (1),
9 NOT TO BE PART OF THE BARGAINING UNIT, AND NOT TO BE SUBJECT TO
10 THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR CONTRACT
11 BETWEEN THE PUBLIC EMPLOYER AND THAT REPRESENTATIVE.

12 (4) AS USED IN THIS SECTION:

13 (A) "CHARTER PUBLIC SCHOOL" MEANS A CHARTER PUBLIC SCHOOL
14 ESTABLISHED UNDER PART 6A OF THE SCHOOL CODE OF 1976, ACT NO. 451
15 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 380.501 TO 380.510 OF
16 THE MICHIGAN COMPILED LAWS.

17 (B) "INTERMEDIATE SCHOOL DISTRICT" MEANS THAT TERM AS
18 DEFINED IN SECTION 4 OF ACT NO. 451 OF THE PUBLIC ACTS OF 1976,
19 BEING SECTION 380.4 OF THE MICHIGAN COMPILED LAWS.

20 (C) "PROFESSIONAL EMPLOYEE" MEANS A TEACHER, SCHOOL ADMINIS-
21 TRATOR, OR OTHER INDIVIDUAL EMPLOYED IN A POSITION REQUIRING AT
22 LEAST A BACCALAUREATE DEGREE.

23 (D) "SCHOOL DISTRICT" MEANS THAT TERM AS DEFINED IN
24 SECTION 6 OF ACT NO. 451 OF THE PUBLIC ACTS OF 1976, BEING
25 SECTION 380.6 OF THE MICHIGAN COMPILED LAWS, OR A LOCAL ACT
26 SCHOOL DISTRICT AS DEFINED IN SECTION 5 OF ACT NO. 451 OF THE

1 PUBLIC ACTS OF 1976, BEING SECTION 380.5 OF THE MICHIGAN COMPIL^d
2 LAWS.

3 Sec. 15. (1) A public employer shall bargain collectively
4 with the representatives of its employees as defined in section
5 11 and is authorized to make and enter into collective bargainin^d
6 agreements with such representatives. ~~For~~ SUBJECT TO
7 SUBSECTIONS (2) AND (3), FOR the purposes of this section AND
8 SECTION 10, to bargain collectively is the performance of the
9 mutual obligation of the employer and the representative of the
10 employees to meet at reasonable times and confer in good faith
11 with respect to wages, hours, and other terms and conditions of
12 employment, or the negotiation of an agreement, or any question
13 arising ~~thereunder~~ UNDER THE AGREEMENT, and the execution of a
14 written contract, ordinance or resolution incorporating any
15 agreement reached if requested by either party, but ~~such~~ THIS
16 obligation does not compel either party to agree to a proposal or
17 require the making of a concession.

18 (2) A PUBLIC EMPLOYER THAT IS A SCHOOL DISTRICT, INTERMEDI-
19 ATE SCHOOL DISTRICT, OR CHARTER PUBLIC SCHOOL, OR THAT IS A JOINT
20 ENDEAVOR OR CONSORTIUM CONSISTING OF ANY COMBINATION OF THOSE,
21 SHALL NOT MEET OR CONFER FOR THE PURPOSES OF COLLECTIVE BARGAIN-
22 ING OR OTHERWISE ENGAGE IN COLLECTIVE BARGAINING WITH THE REPRE-
23 SENTATIVE OF THE EMPLOYEES WITH RESPECT TO ANY OF THE FOLLOWING:

24 (A) WHO IS OR WILL BE THE INSURER, HEALTH CARE CORPORATION,
25 HEALTH MAINTENANCE ORGANIZATION, DENTAL CARE CORPORATION, THIRD
26 PARTY ADMINISTRATOR, OR OTHER ENTITY PROVIDING COVERAGE FOR OR
27 ADMINISTERING AN EMPLOYEE GROUP INSURANCE BENEFIT, OR WHO IS OR

1 WILL BE THE POLICYHOLDER OF THE INSURANCE. THIS SUBDIVISION DOES
2 NOT AFFECT THE DUTY TO BARGAIN WITH RESPECT TO TYPES AND LEVELS
3 OF BENEFITS AND COVERAGES FOR EMPLOYEE GROUP INSURANCE.

4 (B) THE DECISION OF WHETHER OR NOT TO CONTRACT WITH A THIRD
5 PARTY FOR 1 OR MORE NONINSTRUCTIONAL SUPPORT SERVICES, INCLUDING,
6 BUT NOT LIMITED TO, TRANSPORTATION, FOOD SERVICE, JANITORIAL AND
7 BUILDING MAINTENANCE SERVICES, PARAPROFESSIONAL AND TEACHER AIDE
8 OR ASSISTANT SERVICES, AND ADMINISTRATIVE SERVICES SUCH AS DATA
9 PROCESSING, ACCOUNTING, AND CLERICAL FUNCTIONS; OR THE PROCEDURES
10 FOR OBTAINING THE CONTRACT; OR THE IDENTITY OF THE THIRD PARTY.

11 (C) THE USE OF PARENT VOLUNTEERS OR COMMUNITY VOLUNTEERS, OR
12 BOTH, IN PROVIDING SERVICES.

13 (D) THE LENGTH OF THE SCHOOL DAY OR SCHOOL YEAR OR ANY OTHER
14 ISSUE OF ESTABLISHING THE SCHOOL CALENDAR.

15 (E) EMPLOYEE PARTICIPATION IN OR COMPENSATION FOR EMPLOYEE
16 PARTICIPATION IN SCHOOL IMPROVEMENT ACTIVITIES UNDER
17 SECTIONS 1204A, 1277, 1278, AND 1280 OF THE SCHOOL CODE OF 1976,
18 ACT NO. 451 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 380.1204A,
19 380.1277, 380.1278, AND 380.1280 OF THE MICHIGAN COMPILED LAWS,
20 COMMONLY REFERRED TO AS "PUBLIC ACT 25 OF 1990".

21 (F) THE DECISION OF WHETHER OR NOT TO ALLOW OPEN ENROLLMENT
22 OPPORTUNITY IN THE SCHOOL DISTRICT PURSUANT TO SECTION 1147A OF
23 ACT NO. 451 OF THE PUBLIC ACTS OF 1976, BEING SECTION 380.1147A
24 OF THE MICHIGAN COMPILED LAWS, OR OF WHICH GRADE LEVELS OR
25 SCHOOLS IN WHICH TO ALLOW SUCH AN OPEN ENROLLMENT OPPORTUNITY.

26 (G) THE DECISION OF WHETHER OR NOT TO GRANT A CHARTER TO A
27 PROSPECTIVE CHARTER PUBLIC SCHOOL PURSUANT TO PART 6A OF ACT

1 NO. 451 OF THE PUBLIC ACTS OF 1976 OR THE GRANTING OF A LEAVE OF
2 ABSENCE TO AN EMPLOYEE OF A SCHOOL DISTRICT TO PARTICIPATE IN A
3 CHARTER PUBLIC SCHOOL.

4 (H) ANY MATTER THAT FALLS WITHIN THE DECISIONAL AUTHORITY OF
5 A SCHOOL BUILDING GOVERNING COMMITTEE UNDER SECTION 1300A OF ACT
6 NO. 451 OF THE PUBLIC ACTS OF 1976, BEING SECTION 380.1300A OF
7 THE MICHIGAN COMPILED LAWS.

8 (I) ANY MATTER THAT MIGHT HAVE THE EFFECT OF LIMITING, WAIV-
9 ING, OR INTERFERING WITH THE RIGHT OF A PUBLIC EMPLOYEE DESCRIBED
10 IN SECTION 11(3) TO EXERCISE HIS OR HER RIGHTS UNDER THAT
11 SECTION.

12 (3) THE MATTERS DESCRIBED IN SUBSECTION (2)(A) TO (G) ARE
13 PART OF THE MANAGEMENT RIGHTS OF A PUBLIC EMPLOYER DESCRIBED IN
14 SUBSECTION (2) AND, FOR THE PURPOSES OF THIS ACT, ARE WITHIN THE
15 DECISIONAL AUTHORITY OF THE PUBLIC EMPLOYER.

16 (4) AS USED IN THIS SECTION:

17 (A) "CHARTER PUBLIC SCHOOL" MEANS A CHARTER PUBLIC SCHOOL
18 ESTABLISHED UNDER PART 6A OF ACT NO. 451 OF THE PUBLIC ACTS OF
19 1976, BEING SECTIONS 380.501 TO 380.510 OF THE MICHIGAN COMPILED
20 LAWS.

21 (B) "INTERMEDIATE SCHOOL DISTRICT" MEANS THAT TERM AS
22 DEFINED IN SECTION 4 OF ACT NO. 451 OF THE PUBLIC ACTS OF 1976,
23 BEING SECTION 380.4 OF THE MICHIGAN COMPILED LAWS.

24 (C) "SCHOOL DISTRICT" MEANS THAT TERM AS DEFINED IN
25 SECTION 6 OF ACT NO. 451 OF THE PUBLIC ACTS OF 1976, BEING
26 SECTION 380.6 OF THE MICHIGAN COMPILED LAWS, OR A LOCAL ACT
27 SCHOOL DISTRICT AS DEFINED IN SECTION 5 OF ACT NO. 451 OF THE

1 PUBLIC ACTS OF 1976, BEING SECTION 380.5 OF THE MICHIGAN COMPILED
2 LAWS.