

HOUSE BILL No. 5574

January 24, 2002, Introduced by Reps. Gosselin, Drolet, Cassis, Pappageorge, Vear and Bradstreet and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1947 PA 336, entitled

"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,"

by amending sections 10 and 16 (MCL 423.210 and 423.216).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) ~~It shall be unlawful for a~~ A public employer
2 or an officer or agent of a public employer SHALL NOT DO ANY OF
3 THE FOLLOWING:

4 (a) ~~to interfere~~ INTERFERE with, restrain, or coerce
5 public employees in the exercise of their rights guaranteed in
6 section 9. →

7 (b) ~~to initiate~~ INITIATE, create, dominate, contribute to,
8 or interfere with the formation or administration of any labor

1 organization. ~~:- Provided, That~~ THIS SUBDIVISION DOES NOT
 2 PROHIBIT a public employer ~~shall not be prohibited~~ from permit-
 3 ting employees to confer with it during working hours without
 4 loss of time or pay. ~~→~~

5 (c) ~~to discriminate~~ DISCRIMINATE in regard to ~~hire,~~
 6 HIRING OR terms or other conditions of employment in order to
 7 encourage or discourage membership in a labor organization. ~~→~~
 8 ~~Provided further, That nothing in this act or in any law of this~~
 9 ~~state shall preclude a~~ A public employer ~~from making~~ MAY MAKE
 10 an agreement with an exclusive bargaining representative ~~as~~
 11 ~~defined in~~ DESIGNATED OR SELECTED UNDER section 11 to require as
 12 a condition of employment that all employees in the bargaining
 13 unit pay to the exclusive bargaining representative a service fee
 14 equivalent to the amount of dues uniformly required of members of
 15 the exclusive bargaining representative. ~~→~~

16 (d) ~~to discriminate~~ DISCRIMINATE against a public employee
 17 because he OR SHE has given testimony or instituted proceedings
 18 under this act. ~~→ or~~

19 (e) ~~to refuse~~ REFUSE to bargain collectively with the rep-
 20 resentatives of its public employees, subject to ~~the provisions~~
 21 ~~of~~ section 11.

22 (2) ~~It is the purpose of this amendatory act to reaffirm~~
 23 ~~the continuing public policy of this state that the stability and~~
 24 ~~effectiveness of labor relations in the public sector require, if~~
 25 ~~such requirement is~~ IF negotiated UNDER A COLLECTIVE BARGAINING
 26 AGREEMENT with ~~the~~ A public employer, ~~that~~ all employees in
 27 the bargaining unit shall ~~share fairly in the financial support~~

1 ~~of their exclusive bargaining representative by paying~~ PAY to
2 the exclusive bargaining representative a service fee ~~which~~
3 THAT may be equivalent to the amount of dues ~~uniformly~~ required
4 of members of the exclusive bargaining representative.

5 (3) IF A PUBLIC EMPLOYER AGREES TO A SERVICE FEE UNDER SUB-
6 SECTION (2), THE EXCLUSIVE BARGAINING REPRESENTATIVE SHALL ANNU-
7 ALLY FILE WITH THE COMMISSION ALL OF THE FOLLOWING INFORMATION
8 FOR THE EXCLUSIVE BARGAINING REPRESENTATIVE WITHIN 90 DAYS OF THE
9 END OF THE EXCLUSIVE BARGAINING REPRESENTATIVE'S FISCAL YEAR:

10 (A) ALL ASSETS AND LIABILITIES AT THE BEGINNING AND END OF
11 THE FISCAL YEAR.

12 (B) THE SALARY, COST OF FRINGE BENEFITS, ALLOWANCES, AND ANY
13 OTHER DIRECT OR INDIRECT DISBURSEMENTS TO EACH OFFICER OF THE
14 EXCLUSIVE BARGAINING REPRESENTATIVE AND TO ANY EMPLOYEES OF THE
15 EXCLUSIVE BARGAINING REPRESENTATIVE.

16 (C) ALL CONTRIBUTIONS TO STATE OR NATIONAL AFFILIATES OF THE
17 EXCLUSIVE BARGAINING REPRESENTATIVE OR TO ANY OFFICER OF A STATE
18 OR NATIONAL AFFILIATE AND ANY EMPLOYEES OF A STATE OR NATIONAL
19 AFFILIATE.

20 (D) ALL INCOME RECEIVED BY AND THE VALUE OF ANY SERVICES
21 FURNISHED TO THE EXCLUSIVE BARGAINING REPRESENTATIVE BY ANY OF
22 THE FOLLOWING:

23 (i) A PARENT AFFILIATED LABOR ORGANIZATION.

24 (ii) ANY OTHER LABOR ORGANIZATION ON BEHALF OF THE EXCLUSIVE
25 BARGAINING REPRESENTATIVE.

1 (E) THE TOTAL AMOUNT SPENT BY THE EXCLUSIVE BARGAINING
2 REPRESENTATIVE AND THE PERCENTAGE OF TOTAL EXPENDITURES FOR ALL
3 OF THE FOLLOWING:

4 (i) CONTRACT NEGOTIATION AND ADMINISTRATION.

5 (ii) ORGANIZING ACTIVITIES.

6 (iii) STRIKE ACTIVITIES.

7 (iv) LITIGATION, SPECIFYING THE MATTERS AND CASES INVOLVED
8 AND THE NAME, ADDRESS, AND ACTIVITIES OF ANY ATTORNEY, LAW FIRM,
9 LOBBYING FIRM, PUBLIC RELATIONS FIRM, OR OTHER PERSON RETAINED.

10 (v) PUBLIC RELATIONS ACTIVITIES, SPECIFYING THE NAME,
11 ADDRESS, AND ACTIVITIES OF ANY ATTORNEY, LAW FIRM, LOBBYING FIRM,
12 PUBLIC RELATIONS FIRM, OR OTHER PERSON RETAINED.

13 (vi) POLITICAL ACTIVITIES, INCLUDING, BUT NOT LIMITED TO,
14 CONTRIBUTIONS TO POLITICAL CAMPAIGNS, CONTRIBUTIONS TO REFERENDUM
15 OR INITIATIVE CAMPAIGNS, AND EXPRESS ADVOCACY ON BEHALF OF OR IN
16 OPPOSITION TO ANY CANDIDATE FOR ELECTION, REFERENDUM, OR
17 INITIATIVE.

18 (vii) ACTIVITIES INTENDED TO INFLUENCE FEDERAL, STATE, OR
19 LOCAL LEGISLATION, REGULATIONS, OR POLICIES, SPECIFYING THE NAME,
20 ADDRESS, AND ACTIVITIES OF ANY ATTORNEY, LAW FIRM, LOBBYING FIRM,
21 PUBLIC RELATIONS FIRM, OR OTHER PERSON RETAINED.

22 (viii) ISSUE ADVOCACY, VOTER EDUCATION, VOTER REGISTRATION,
23 AND ACTIVITIES INTENDED TO INCREASE VOTER TURNOUT.

24 (ix) TRAINING ACTIVITIES FOR THE EXCLUSIVE BARGAINING
25 REPRESENTATIVE'S OFFICERS OR EMPLOYEES.

1 (x) CONFERENCE, CONVENTION, AND TRAVEL ACTIVITIES ENGAGED IN
2 BY THE EXCLUSIVE BARGAINING REPRESENTATIVE'S OFFICERS OR
3 EMPLOYEES.

4 (F) A LIST OF ANY POLITICAL CANDIDATES AND POLITICAL, CHARI-
5 TABLE, NONPROFIT, OR COMMUNITY ORGANIZATIONS TO WHICH THE EXCLU-
6 SIVE BARGAINING REPRESENTATIVE CONTRIBUTED FINANCIAL ASSISTANCE
7 OR PROVIDED OTHER ASSISTANCE AND THE AMOUNT CONTRIBUTED OR THE
8 FAIR MARKET VALUE OF THE ASSISTANCE PROVIDED.

9 (G) THE NAME AND ADDRESS OF ANY POLITICAL ACTION COMMITTEE
10 WITH WHICH THE EXCLUSIVE BARGAINING REPRESENTATIVE IS AFFILIATED
11 OR TO WHICH IT PROVIDED A CONTRIBUTION, SPECIFYING THE TOTAL
12 AMOUNT OF ANY CONTRIBUTION MADE, THE CANDIDATES OR ISSUES TO
13 WHICH THE COMMITTEE PROVIDED FINANCIAL ASSISTANCE, AND THE AMOUNT
14 OF FINANCIAL ASSISTANCE THE COMMITTEE PROVIDED FOR THOSE CANDI-
15 DATES OR ISSUES.

16 (4) THE REPORT REQUIRED UNDER SUBSECTION (3) SHALL BE PRE-
17 PARED BY AN INDEPENDENT AUDITING ORGANIZATION, USING GENERALLY
18 ACCEPTED AUDITING STANDARDS AND GENERALLY ACCEPTED ACCOUNTING
19 PRINCIPLES. THE INDEPENDENT AUDITING ORGANIZATION SHALL REPORT
20 EXPENDITURES OR PORTIONS OF EXPENDITURES OF THE EXCLUSIVE BAR-
21 GAINING REPRESENTATIVE AS EITHER GERMANE OR NONGERMANE TO COLLEC-
22 TIVE BARGAINING, CONTRACT ADMINISTRATION, OR GRIEVANCE
23 PROCESSING.

24 (5) ~~-(3) It shall be unlawful for a~~ A labor organization or
25 its agents SHALL NOT DO ANY OF THE FOLLOWING:

26 (a) ~~to restrain~~ RESTRAIN or coerce EITHER OF THE
27 FOLLOWING:

1 (i) ~~public~~ PUBLIC employees in the exercise of ~~the~~ THEIR
 2 rights guaranteed in section 9. ~~:- Provided, That this subdivi-~~
 3 ~~sion shall~~ THIS SUBPARAGRAPH DOES not impair the right of a
 4 labor organization to prescribe its own rules with respect to the
 5 acquisition or retention of membership ~~therein; or~~ IN THE
 6 ORGANIZATION.

7 (ii) ~~a~~ A public employer in the selection of its represen-
 8 tatives for the ~~purposes~~ PURPOSE of collective bargaining or
 9 the adjustment of grievances. ~~→~~

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

13 (c) ~~to refuse~~ REFUSE to bargain collectively with a public
 14 employer, ~~provided it~~ IF THE LABOR ORGANIZATION, SUBJECT TO
 15 SECTION 11, is the representative of the public employer's
 16 employees. ~~subject to section 11.~~

17 (D) FAIL OR REFUSE TO PREPARE THE REPORT REQUIRED UNDER SUB-
 18 SECTION (3).

19 Sec. 16. (1) Violations of ~~the provisions of~~ section 10
 20 ~~shall be deemed to be~~ ARE unfair labor practices AND, EXCEPT AS
 21 OTHERWISE PROVIDED IN SUBSECTION (2) FOR A VIOLATION OF SECTION
 22 10(3), ARE remediable by the commission in the following manner:

23 (a) ~~Whenever~~ IF it is charged that ~~any~~ A person has
 24 engaged in or is engaging in ~~any such~~ AN unfair labor practice,
 25 the commission ~~—~~ or any agent designated by the commission ~~for~~
 26 ~~such purposes,~~ may issue and cause to be served upon the person
 27 a complaint stating the charges ~~in that respect,~~ and containing

1 a notice of hearing before the commission, ~~or~~ a commissioner,
2 ~~thereof,~~ or ~~before~~ a designated agent, at a place ~~therein~~
3 ~~fixed~~ STATED IN THE NOTICE OF HEARING, not less than 5 days
4 after the ~~serving of the~~ complaint IS SERVED. ~~No~~ EXCEPT AS
5 OTHERWISE PROVIDED IN THIS SUBDIVISION, A complaint shall ~~issue~~
6 NOT BE ISSUED based upon any unfair labor practice ~~occurring~~
7 THAT OCCURS more than 6 months ~~prior to the filing of~~ BEFORE
8 the charge IS FILED with the commission and ~~the service of~~ a
9 copy ~~thereof upon~~ SERVED ON the person against whom the charge
10 is made. ~~, unless the~~ IF A person aggrieved ~~thereby~~ BY AN
11 UNFAIR LABOR PRACTICE was prevented from filing ~~the~~ A charge by
12 reason of service in the armed forces, ~~in which event~~ the
13 6-month period shall be computed from the day of his OR HER
14 discharge. ~~Any~~ A complaint may be amended by the commissioner,
15 ~~or~~ AN agent conducting the hearing, or the commission, at any
16 time ~~prior to the issuance of~~ BEFORE an order based ~~thereon~~
17 ON THE COMPLAINT IS ISSUED. The person upon whom the complaint
18 is served may file an answer to the original or amended complaint
19 and appear in person or otherwise and give testimony at the place
20 and time fixed in the complaint. In the discretion of the
21 commissioner, ~~or~~ AN agent conducting the hearing, or the com-
22 mission, any other person may be allowed to intervene in the pro-
23 ceeding and to present testimony. ~~Any~~ A proceeding shall be
24 conducted pursuant to chapter 4 of ~~Act No. 306 of the Public~~
25 ~~Acts of 1969, as amended, being sections 24.271 to 24.287 of the~~
26 ~~Michigan Compiled Laws~~ THE ADMINISTRATIVE PROCEDURES ACT OF
27 1969, 1969 PA 306, MCL 24.271 TO 24.287.

1 (b) ~~The testimony~~ TESTIMONY taken by the commissioner,
 2 agent, or ~~the~~ commission shall be reduced to writing and filed
 3 with the commission. Thereafter, the commission, upon notice,
 4 may take further testimony or hear argument. If, upon the pre-
 5 ponderance of the testimony taken, the commission is of the opin-
 6 ion that ~~any~~ A person named in the complaint has engaged in or
 7 is engaging in the unfair labor practice CHARGED, then ~~it~~ THE
 8 COMMISSION shall state its findings of fact and ~~shall~~ issue and
 9 cause to be served on the person an order requiring him OR HER to
 10 cease and desist from the unfair labor practice ~~—~~ and to take
 11 ~~such~~ affirmative action, including reinstatement of employees
 12 with or without back pay, ~~as will~~ TO effectuate the policies of
 13 this act. The order may ~~further~~ ALSO require the person
 14 CHARGED to make reports from time to time showing the extent to
 15 which he OR SHE has complied with the order. If, upon the pre-
 16 ponderance of the testimony taken, the commission is ~~not~~ of the
 17 opinion that the person named in the complaint has NOT engaged in
 18 or is NOT engaging in the unfair labor practice CHARGED, ~~then~~
 19 the commission shall state its findings of fact and shall issue
 20 an order dismissing the complaint. ~~No~~ AN order of the commis-
 21 sion shall NOT require the reinstatement of any individual as an
 22 employee who has been suspended or discharged, or the payment to
 23 him OR HER of any back pay, if the individual was suspended or
 24 discharged for cause. If the evidence is presented before a com-
 25 missioner OR AN EXAMINER of the commission, ~~or before examiners~~
 26 ~~thereof,~~ the commissioner ~~—~~ or ~~examiners~~ EXAMINER shall
 27 issue and cause to be served on the parties to the proceeding a

1 proposed report, together with a recommended order, which shall
 2 be filed with the commission. ~~—, and if~~ IF an exception TO THE
 3 RECOMMENDED ORDER is not filed within 20 days after service
 4 ~~thereof upon~~ ON the parties, or within ~~such further~~ AN
 5 ADDITIONAL period ~~as~~ AUTHORIZED BY the commission, ~~may~~
 6 ~~authorize,~~ the recommended order shall become the order of the
 7 commission and ~~become~~ IS effective as prescribed in the order.

8 (c) Until the record in a case has been filed in a court,
 9 the commission MAY at any time, upon reasonable notice and in
 10 ~~such~~ THE manner ~~as~~ it ~~deems~~ CONSIDERS proper, ~~may~~ modify
 11 or set aside, in whole or in part, any finding or order made or
 12 issued by it.

13 (d) The commission or any prevailing party may petition the
 14 court of appeals for the enforcement of the order and for appro-
 15 priate temporary relief or restraining order, and shall file in
 16 the court the record in the proceedings. Upon the filing of the
 17 petition, the court shall cause notice ~~thereof~~ OF THE PETITION
 18 to be served upon the person ~~—, and thereupon shall have~~ AGAINST
 19 WHOM ENFORCEMENT IS SOUGHT. AFTER NOTICE OF THE PETITION IS
 20 SERVED, THE COURT HAS jurisdiction of the proceeding and shall
 21 summarily grant ~~such~~ temporary or permanent relief or A
 22 restraining order, ~~as it deems just and proper,~~ enforcing, mod-
 23 ifying, enforcing as ~~so~~ modified, or setting aside, in whole or
 24 in part, the order of the commission. ~~No~~ AN objection that has
 25 not been ~~urged before~~ PRESENTED TO the commission ~~—, OR~~ its
 26 commissioner or agent ~~—,~~ shall NOT be considered by the court,
 27 unless the failure or neglect to ~~urge~~ PRESENT the objection is

1 excused because of extraordinary circumstances. The findings of
 2 the commission with respect to questions of fact, if supported by
 3 competent, material, and substantial evidence on the record con-
 4 sidered as a whole, ~~shall be~~ ARE conclusive. If either party
 5 applies to the court for leave to present additional evidence and
 6 shows to the satisfaction of the court that the additional evi-
 7 dence is material and that there were reasonable grounds for the
 8 failure to present it in the hearing before the commission ~~—~~ OR
 9 its commissioner or agent, the court may order the additional
 10 evidence to be taken before the commission ~~—~~ OR its commis-
 11 sioner or agent ~~—~~ and to be made a part of the record. The
 12 commission may modify its findings as to the facts, or make new
 13 findings, ~~by reason~~ BECAUSE of THE additional evidence ~~so~~
 14 taken and filed. ~~—, and it~~ THE COMMISSION shall file the modify-
 15 ing or new findings, which findings with respect to questions of
 16 fact, if supported by competent, material, and substantial evi-
 17 dence on the record considered as a whole, ~~shall be~~ ARE conclu-
 18 sive, and shall file its recommendations, if any, ~~for the modi-~~
 19 ~~fication or setting~~ TO MODIFY OR SET aside ~~of~~ its original
 20 order. ~~Upon the filing of the record with it the~~ THE COURT'S
 21 jurisdiction ~~of the court shall be~~ IS exclusive and its judg-
 22 ment and decree ~~shall be~~ IS final, ~~except that the same shall~~
 23 ~~be~~ subject to review by the supreme court in accordance with the
 24 general court rules.

25 (e) ~~Any~~ A party aggrieved by a final order of the commis-
 26 sion granting or denying, in whole or in part, the relief sought
 27 may ~~within 20 days of such order as a matter of right~~ obtain a

1 review of the order in the court of appeals by filing in the
2 court WITHIN 20 DAYS OF THE ORDER a petition ~~praying~~ REQUESTING
3 that the order of the commission be modified or set aside. ~~—~~
4 ~~with~~ A copy of the petition SHALL BE filed on the commission. ~~—~~,
5 ~~and thereupon the~~ THE aggrieved party shall file in the court
6 the record in the proceeding, certified by the commission. ~~Upon~~
7 ~~the timely filing of~~ IF the petition IS TIMELY FILED, the court
8 shall proceed in the same manner as in the case of an application
9 by the commission under ~~subsection~~ SUBDIVISION (d), and shall
10 summarily grant ~~to the commission or to any prevailing party~~
11 ~~such~~ temporary relief or A restraining order, ~~as it deems just~~
12 ~~and proper,~~ enforcing, modifying, enforcing as ~~so~~ modified, or
13 setting aside in whole or in part the order of the commission.
14 The findings of the commission with respect to questions of fact,
15 if supported by competent, material, and substantial evidence on
16 the record considered as a whole, ~~shall be~~ ARE conclusive. If
17 a timely petition for review is not filed under this subdivision
18 by an aggrieved party, it shall be conclusively presumed that the
19 commission's order is supported by competent, material, and sub-
20 stantial evidence on the record considered as a whole, and the
21 commission or any prevailing party ~~shall be~~ IS entitled, upon
22 application, ~~therefor,~~ to a summary order enforcing the
23 commission's order.

24 (f) The commencement of proceedings under subdivisions (d)
25 or (e) shall not, unless specifically ordered by the court, oper-
26 ate as a stay of the commission's order.

1 (g) Petitions filed under ~~subdivisions~~ SUBDIVISION (d)
2 ~~and~~ OR (e) shall be heard expeditiously by the court, ~~to which~~
3 ~~presented,~~ and for good cause shown shall take precedence over
4 all other civil matters except earlier matters of the same
5 character.

6 (h) The commission or any charging party ~~shall have power,~~
7 ~~upon issuance of a complaint as provided in~~ MAY, AFTER A COM-
8 PLAINT IS ISSUED UNDER subdivision (a), ~~charging that any person~~
9 ~~has engaged in or is engaging in an unfair labor practice, to~~
10 petition ~~any~~ THE circuit court ~~within any circuit~~ where the
11 unfair labor practice in question is alleged to have occurred or
12 where ~~such~~ THE person CHARGED resides or exercises or may exer-
13 cise its governmental authority, for appropriate temporary relief
14 or A restraining order. ~~, in accordance with the general court~~
15 ~~rules, and the~~ THE CIRCUIT court ~~shall have~~ HAS jurisdiction
16 to grant to the commission or any charging party ~~such~~ THE tem-
17 porary relief or restraining order ~~as~~ it deems ~~just and~~
18 proper.

19 (i) For ~~the purpose of~~ all hearings and investigations,
20 which in the opinion of the commission are necessary ~~and proper~~
21 for the exercise of the powers vested in it under this section,
22 the provisions of section 11 of ~~Act No. 176 of the Public Acts~~
23 ~~of 1939, as amended, being section 423.11 of the Michigan~~
24 ~~Compiled Laws, shall be~~ 1939 PA 176, MCL 423.11, ARE applicable,
25 except that subpoenas may issue ~~as provided in section 11~~ with-
26 out regard to whether mediation ~~shall have~~ HAS been
27 undertaken.

1 (j) The labor relations and mediation functions of this act
2 shall be separately administered by the commission.

3 (2) A FAILURE OR REFUSAL TO PROVIDE THE REPORT REQUIRED
4 UNDER SECTION 10(3) IS AN UNFAIR LABOR PRACTICE AND IS REMEDIABLE
5 BY THE COMMISSION IN THE FOLLOWING MANNER:

6 (A) FOR THE FIRST FAILURE OR REFUSAL, THE COMMISSION SHALL
7 ORDER THE EXCLUSIVE BARGAINING REPRESENTATIVE TO REFUND ALL MEM-
8 BERSHIP DUES OR SERVICE FEES TO EMPLOYEES OF THE BARGAINING UNIT
9 FOR THE PERIOD COVERED BY THE REPORT.

10 (B) FOR A SECOND FAILURE OR REFUSAL, THE COMMISSION SHALL
11 ORDER AN ELECTION IN THE BARGAINING UNIT AFFECTED PURSUANT TO
12 SECTION 12 AS TO WHETHER THE LABOR ORGANIZATION WILL CONTINUE TO
13 BE THE EXCLUSIVE BARGAINING REPRESENTATIVE FOR THE BARGAINING
14 UNIT AS PROVIDED IN SECTION 11. THE ELECTION SHALL BE CONDUCTED
15 UPON THE EXPIRATION OF ANY EXISTING COLLECTIVE BARGAINING
16 AGREEMENT.