

HOUSE BILL No. 5050

June 9, 2009, Introduced by Reps. Rogers and Womack and referred to the Committee on Labor.

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 2a and 6 (MCL 423.202a and 423.206), section 6 as amended section 2a as added by 1994 PA 112.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2a. (1) IF CONDITIONS CONSTITUTING A STRIKE IN VIOLATION
2 OF SECTION 2 BY 1 OR MORE PUBLIC SCHOOL EMPLOYEES EXIST, THE
3 SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL NOTIFY THE COMMISSION OF
4 THE FULL OR PARTIAL DAYS A PUBLIC SCHOOL EMPLOYEE WAS ENGAGED IN
5 THE STRIKE.

6 (2) ~~(1) If a public school employer alleges that there is a~~

1 ~~strike by 1 or more public school employees in violation of section~~
2 ~~2, the~~ **IF CONDITIONS CONSTITUTING A STRIKE IN VIOLATION OF SECTION**
3 **2 BY 1 OR MORE PUBLIC SCHOOL EMPLOYEES EXIST, A** public school
4 employer shall notify the commission **AND THE SUPERINTENDENT OF**
5 **PUBLIC INSTRUCTION** of the full or partial days a public school
6 employee was engaged in the alleged strike.

7 (3) ~~(2)~~ If a bargaining representative alleges that there is a
8 lockout by a public school employer in violation of section 2, the
9 bargaining representative shall notify the commission of the full
10 or partial days of the alleged lockout.

11 (4) ~~(3) Within 60~~ **NOT MORE THAN 2** days after receipt of a
12 notice made pursuant to subsection (1), ~~or~~ (2), **OR (3)**, the
13 commission shall conduct a hearing to determine if there has been a
14 violation and shall issue its decision and order. **THE HEARING SHALL**
15 **OFFER AN OPPORTUNITY FOR THE BARGAINING REPRESENTATIVE, PUBLIC**
16 **SCHOOL EMPLOYER, OR PUBLIC SCHOOL EMPLOYEE TO OFFER TESTIMONY OR**
17 **OTHER EVIDENCE TO SUPPORT OR CONTEST THE ALLEGATION OF A STRIKE OR**
18 **LOCKOUT.** A hearing conducted under this subsection is separate and
19 distinct from, and is not subject to the procedures and timelines
20 of, a proceeding conducted under section 6.

21 (5) ~~(4)~~ If, after a hearing under subsection ~~(3)~~ **(4)**, a
22 majority of the commission finds that 1 or more public school
23 employees engaged in a strike in violation of section 2, the
24 commission shall fine each public school employee an amount equal
25 to 1 day of pay for that public school employee for each full or
26 partial day that he or she engaged in the strike and shall fine the
27 bargaining representative of the public school employee or

1 employees \$5,000.00 for each full or partial day the public school
2 employee or employees engaged in the strike.

3 (6) ~~(5)~~—If, after a hearing under subsection ~~(3)~~—(4), a
4 majority of the commission finds that a public school employer
5 instituted a lockout in violation of section 2, the commission
6 shall fine the public school employer \$5,000.00 for each full or
7 partial day of the lockout and shall fine each member of the public
8 school employer's governing board \$250.00 for each full or partial
9 day of the lockout.

10 (7) ~~(6)~~—If the commission imposes a fine against a public
11 school employee under subsection ~~(4)~~—(5) and the public school
12 employee continues to be employed by a public school employer, the
13 commission shall order the public school employer to deduct the
14 fine from the public school employee's annual salary. The public
15 school employee's annual salary is the annual salary that is
16 established in the applicable contract in effect at the time of the
17 strike or, if no applicable contract is in effect at the time of
18 the strike, in the applicable contract in effect at the time of the
19 decision and order. However, if no applicable contract is in effect
20 at either of those times, the public school employee's annual
21 salary shall be considered to be the annual salary that applied or
22 would have applied to the public school employee in the most recent
23 applicable contract in effect before the strike. A public school
24 employer shall comply promptly with an order under this subsection.
25 A deduction under this subsection is not a demotion for the
26 purposes of ~~Act No. 4 of the Extra Session of 1937, being sections~~
27 ~~38.71 to 38.191 of the Michigan Compiled Laws 1937 (EX SESS) PA 4,~~

1 MCL 38.71 TO 38.191.

2 (8) ~~(7)~~—The commission shall transmit money received from
3 fines imposed under this section, and a public school employer
4 shall transmit money deducted pursuant to an order under subsection
5 ~~(6)~~—(7), to the state treasurer for deposit in the state school aid
6 fund established under section 11 of article IX of the state
7 constitution of 1963.

8 (9) ~~(8)~~—If the commission does not receive payment of a fine
9 imposed under this section within 30 days after the imposition of
10 the fine, or if a public school employer does not deduct a fine
11 from a public school employee's pay pursuant to an order under
12 subsection ~~(6)~~—(7), the commission shall institute collection
13 proceedings.

14 (10) ~~(9)~~—Fines imposed under this section are in addition to
15 all other penalties prescribed by this act and by law.

16 (11) ~~(10)~~—A public school employer **OR THE SUPERINTENDENT OF**
17 **PUBLIC INSTRUCTION** may bring an action to enjoin a strike by public
18 school employees in violation of section 2, and a bargaining
19 representative may bring an action to enjoin a lockout by a public
20 school employer in violation of section 2, in the circuit court for
21 the county in which the affected public school is located. **A—IF THE**
22 **COMMISSION HAS MADE A DETERMINATION THAT A STRIKE OR LOCKOUT EXISTS**
23 **AFTER A HEARING UNDER SUBSECTION (4), THAT FINDING SHALL NOT BE**
24 **OVERTURNED EXCEPT BY CLEAR AND CONVINCING EVIDENCE. IF THE** court
25 having jurisdiction of an action brought under this subsection
26 ~~shall grant injunctive relief if the court finds that a strike or~~
27 ~~lockout has occurred, without regard to the existence of other~~

1 ~~remedies, demonstration of irreparable harm, or other factors.~~
2 ~~Failure to comply with an order of the court may be punished as~~
3 ~~contempt. In addition, the court shall award court costs and~~
4 ~~reasonable attorney fees to a plaintiff who prevails in an action~~
5 ~~brought under this subsection.~~ FINDS THAT CONDITIONS CONSTITUTING A
6 STRIKE OR LOCKOUT IN VIOLATION OF SECTION 2 EXIST AND UNLESS CLEAR
7 AND CONVINCING EVIDENCE HAS SHOWN THAT THE SANCTION WOULD NOT BE
8 EQUITABLE OR THE SANCTION WOULD DUPLICATE A SANCTION IMPOSED BY THE
9 COMMISSION FOR THE SAME ACTIVITY UNDER SUBSECTION (5) OR (6), THE
10 COURT SHALL DO ALL OF THE FOLLOWING:

11 (A) FOR A STRIKE IN VIOLATION OF SECTION 2, ORDER THE LABOR
12 ORGANIZATION TO PAY A FINE OF \$5,000.00 FOR EACH FULL OR PARTIAL
13 DAY THE PUBLIC SCHOOL EMPLOYEE OR EMPLOYEES ENGAGED IN THE STRIKE
14 AND ORDER EACH PUBLIC SCHOOL EMPLOYEE TO PAY A FINE IN AN AMOUNT
15 EQUAL TO 1 DAY OF PAY FOR THAT PUBLIC SCHOOL EMPLOYEE FOR EACH FULL
16 OR PARTIAL DAY THE PUBLIC SCHOOL EMPLOYEE ENGAGED IN THE STRIKE.
17 FOR A LOCKOUT IN VIOLATION OF SECTION 2, ORDER THE PUBLIC SCHOOL
18 EMPLOYER TO PAY A FINE OF \$5,000.00 FOR EACH FULL OR PARTIAL DAY OF
19 THE LOCKOUT AND ORDER EACH MEMBER OF THE PUBLIC SCHOOL EMPLOYER'S
20 GOVERNING BOARD TO PAY A FINE OF \$250.00 FOR EACH FULL OR PARTIAL
21 DAY OF THE LOCKOUT.

22 (B) ORDER THE PUBLIC SCHOOL EMPLOYEES OR PUBLIC SCHOOL
23 EMPLOYER ACTING IN VIOLATION OF SECTION 2 TO END THE STRIKE OR
24 LOCKOUT.

25 (C) AWARD COSTS AND ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS
26 IN AN ACTION UNDER THIS SUBSECTION.

27 (D) GRANT ADDITIONAL EQUITABLE RELIEF THAT THE COURT FINDS

1 **APPROPRIATE.**

2 (12) AN ORDER ISSUED UNDER SUBSECTION (11) IS ENFORCEABLE
3 THROUGH THE COURT'S CONTEMPT POWER.

4 (13) ~~(11)~~—A public school employer shall not provide to a
5 public school employee or to a board member any compensation or
6 additional work assignment that is intended to reimburse the public
7 school employee or board member for a monetary penalty imposed
8 under this section or that is intended to allow the public school
9 employee or board member to recover a monetary penalty imposed
10 under this section.

11 (14) ~~(12)~~—As used in this section, "public school employee"
12 means a person employed by a public school employer.

13 Sec. 6. (1) Notwithstanding the provisions of any other law, a
14 public employee who, by concerted action with others and without
15 the lawful approval of his or her superior, willfully absents
16 himself or herself from his or her position, or abstains in whole
17 or in part from the full, faithful and proper performance of his or
18 her duties for the purpose of inducing, influencing or coercing a
19 change in employment conditions, compensation, or the rights,
20 privileges, or obligations of employment, or a public employee
21 employed by a public school employer who engages in an action
22 described in this subsection for the purpose of protesting or
23 responding to an act alleged or determined to be an unfair labor
24 practice committed by the public school employer, shall be
25 considered to be on strike.

26 (2) Before a public employer may discipline or discharge a
27 public employee for engaging in a strike, the public employee, upon

1 request, is entitled to a determination under this section as to
2 whether he or she violated this act. The request shall be filed in
3 writing, with the officer or body having power to remove or
4 discipline the employee, within 10 days after regular compensation
5 of the employee has ceased or other discipline has been imposed. If
6 a request is filed, the officer or body, within ~~10~~5 days after
7 receipt of the request, shall commence a proceeding for the
8 determination of whether the public employee has violated this act.
9 The proceedings shall be held in accordance with the law and
10 regulations appropriate to a proceeding to remove the public
11 employee and shall be held without unnecessary delay. The decision
12 of the officer or body shall be made within ~~10~~2 days after the
13 conclusion of the proceeding. If the employee involved is found to
14 have violated this act and his or her employment is terminated or
15 other discipline is imposed, the employee has the right of review
16 to the circuit court having jurisdiction of the parties, within 30
17 days from the date of the decision, for a determination as to
18 whether the decision is supported by competent, material, and
19 substantial evidence on the whole record. **A PUBLIC EMPLOYER MAY**
20 **CONSOLIDATE EMPLOYEE HEARINGS UNDER THIS SUBSECTION UNLESS THE**
21 **EMPLOYEE DEMONSTRATES MANIFEST INJUSTICE FROM THE CONSOLIDATION.**
22 This subsection does not apply to a penalty imposed under section
23 2a.