

SUBSTITUTE FOR
SENATE BILL NO. 1018

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; to require certain provisions in collective bargaining agreements; to prescribe means of enforcement and penalties for the violation of the provisions of this act; and to make appropriations,"

by amending sections 1 and 14 (MCL 423.201 and 423.214), section 1 as amended by 2012 PA 45.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) As used in this act:

2 (a) "Bargaining representative" means a labor organization
3 recognized by an employer or certified by the commission as the
4 sole and exclusive bargaining representative of certain employees
5 of the employer.

6 (b) "Commission" means the employment relations commission
7 created in section 3 of 1939 PA 176, MCL 423.3.

1 (c) "Intermediate school district" means that term as defined
2 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

3 (d) "Lockout" means the temporary withholding of work from a
4 group of employees by means of shutting down the operation of the
5 employer in order to bring pressure upon the affected employees or
6 the bargaining representative, or both, to accept the employer's
7 terms of settlement of a labor dispute.

8 (e) "Public employee" means a person holding a position by
9 appointment or employment in the government of this state, in the
10 government of 1 or more of the political subdivisions of this
11 state, in the public school service, in a public or special
12 district, in the service of an authority, commission, or board, or
13 in any other branch of the public service, subject to the following
14 exceptions:

15 (i) ~~Beginning March 31, 1997, a~~ **A** person employed by a private
16 organization or entity ~~that~~ **WHO** provides services under a time-
17 limited contract with ~~the~~ **THIS** state or a political subdivision of
18 ~~the~~ **THIS** state **OR WHO RECEIVES A DIRECT OR INDIRECT GOVERNMENT**
19 **SUBSIDY IN HIS OR HER PRIVATE EMPLOYMENT** is not an employee of ~~the~~
20 **THIS** state or that political subdivision, and is not a public
21 employee. **THIS PROVISION SHALL NOT BE SUPERSEDED BY ANY INTERLOCAL**
22 **AGREEMENT, MEMORANDUM OF UNDERSTANDING, MEMORANDUM OF COMMITMENT,**
23 **OR OTHER DOCUMENT SIMILAR TO THESE.**

24 (ii) If, by April 9, 2000, a public school employer that is the
25 chief executive officer serving in a school district of the first
26 class under part 5A of the revised school code, 1976 PA 451, MCL
27 380.371 to 380.376, issues an order determining that it is in the

1 best interests of the school district, then a public school
2 administrator employed by that school district is not a public
3 employee for purposes of this act. The exception under this
4 subparagraph applies to public school administrators employed by
5 that school district after the date of the order described in this
6 subparagraph whether or not the chief executive officer remains in
7 place in the school district. This exception does not prohibit the
8 chief executive officer or board of a school district of the first
9 class or its designee from having informal meetings with public
10 school administrators to discuss wages and working conditions.

11 (iii) An individual serving as a graduate student research
12 assistant or in an equivalent position and any individual whose
13 position does not have sufficient indicia of an employer-employee
14 relationship using the 20-factor test announced by the internal
15 revenue service of the United States department of treasury in
16 revenue ruling 87-41, 1987-1 C.B. 296 is not a public employee
17 entitled to representation or collective bargaining rights under
18 this act.

19 (f) "Public school academy" means a public school academy or
20 strict discipline academy organized under the revised school code,
21 1976 PA 451, MCL 380.1 to 380.1852.

22 (g) "Public school administrator" means a superintendent,
23 assistant superintendent, chief business official, principal, or
24 assistant principal employed by a school district, intermediate
25 school district, or public school academy.

26 (h) "Public school employer" means a public employer that is
27 the board of a school district, intermediate school district, or

1 public school academy; is the chief executive officer of a school
2 district in which a school reform board is in place under part 5A
3 of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or
4 is the governing board of a joint endeavor or consortium consisting
5 of any combination of school districts, intermediate school
6 districts, or public school academies.

7 (i) "School district" means that term as defined in section 6
8 of the revised school code, 1976 PA 451, MCL 380.6, or a local act
9 school district as defined in section 5 of the revised school code,
10 1976 PA 451, MCL 380.5.

11 (j) "Strike" means the concerted failure to report for duty,
12 the willful absence from one's position, the stoppage of work, or
13 the abstinence in whole or in part from the full, faithful, and
14 proper performance of the duties of employment for the purpose of
15 inducing, influencing, or coercing a change in employment
16 conditions, compensation, or the rights, privileges, or obligations
17 of employment. For employees of a public school employer, strike
18 also includes an action described in this subdivision that is taken
19 for the purpose of protesting or responding to an act alleged or
20 determined to be an unfair labor practice committed by the public
21 school employer.

22 (2) This act does not limit, impair, or affect the right of a
23 public employee to the expression or communication of a view,
24 grievance, complaint, or opinion on any matter related to the
25 conditions or compensation of public employment or their betterment
26 as long as the expression or communication does not interfere with
27 the full, faithful, and proper performance of the duties of

1 employment.

2 Sec. 14. **(1)** An election shall not be directed in any
3 bargaining unit or any subdivision within which, in the preceding
4 12-month period, a valid election was held. The commission shall
5 determine who is eligible to vote in the election and shall
6 promulgate rules governing the election. In an election involving
7 more than 2 choices, ~~where-IF~~ none of the choices on the ballot
8 receives a majority vote, a runoff election shall be conducted
9 between the 2 choices receiving the 2 largest numbers of valid
10 votes cast in the election. An election shall not be directed in
11 any bargaining unit or subdivision thereof where there is in force
12 and effect a valid collective bargaining agreement ~~which-THAT~~ was
13 not prematurely extended and ~~which-THAT~~ is of fixed duration. A
14 collective bargaining agreement ~~shall-DOES~~ not bar an election upon
15 the petition of persons not parties thereto ~~where-IF~~ more than 3
16 years have elapsed since the agreement's execution or last timely
17 renewal, whichever was later.

18 **(2) AN ELECTION SHALL NOT BE DIRECTED FOR, AND THE COMMISSION**
19 **OR A PUBLIC EMPLOYER SHALL NOT RECOGNIZE, A BARGAINING UNIT OF A**
20 **PUBLIC EMPLOYER CONSISTING OF INDIVIDUALS WHO ARE NOT PUBLIC**
21 **EMPLOYEES. A BARGAINING UNIT THAT IS FORMED OR RECOGNIZED IN**
22 **VIOLATION OF THIS SUBSECTION IS INVALID AND VOID.**

23 Enacting section 1. This amendatory act is curative, reflects
24 the original intent of the legislature, and is retroactive.