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BILL



ANALYSIS

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Senate Bill 713 (as introduced 1-21-16)  
Sponsor: Senator Phil Pavlov  
Committee: Education

Date Completed: 2-2-16

### **CONTENT**

**The bill would amend Public Act 336 of 1947, which prohibits strikes by various public employees, to do the following:**

- Require the Superintendent of Public Instruction to notify the Michigan Employment Relations Commission of the full or partial days a public school employee was engaged in the strike.**
- Require the Commission to conduct a hearing to determine if there had been a violation of the Act within two days, instead of 60 days, of receiving notice of a strike or lockout.**
- Allow the Superintendent to bring an action to enjoin a strike by a public school employee.**
- Require a court having jurisdiction of an action to enjoin a strike or lockout to impose fines and order other relief the court found appropriate.**
- Require a public employer to commence a proceeding to determine whether a public employee violated the Act within five days of receiving a request for a hearing, and to issue a decision within two days of the conclusion of the proceeding.**
- Allow a public employer to consolidate employee hearings unless an employee demonstrated manifest injustice from the consolidation.**

The bill would take effect 90 days after its enactment.

#### **Notice & Hearing; Strikes & Lockouts; Commission-Ordered Penalties**

Section 2 of the Act prohibits a public employee from engaging in a strike and a public school employer from instituting a lockout. Under the bill, if a public school employee engaged in a strike in violation of Section 2, the Superintendent of Public Instruction would have to notify the Commission of the full or partial days the public school employee was engaged in the strike.

Currently, if a public school employer alleges that there is a strike by one or more public school employees, the public school employer must notify the Commission of the full or partial days a public school employee was engaged in the alleged strike. Under the bill, the public school employer also would have to notify the Superintendent of Public Instruction.

The Act requires the Commission, within 60 days of receiving a notice of a strike or a lockout, to conduct a hearing to determine if there has been a violation and issue its decision and order. The bill would reduce this period of time to two days. The hearing would have to offer an opportunity for the bargaining representative, public school employer, or public school

employee to offer testimony or other evidence to support or contest the allegation of a strike or lockout.

Currently, if the Commission finds, after a hearing, that one or more public school employees engaged in a strike in violation of Section 2, the Commission must fine each employee an amount equal to one day of pay for each full or partial day that he or she engaged in the strike, and must fine the bargaining representative of the employee or employees \$5,000 for each full or partial day the employee or employees engaged in the strike.

Also, if the Commission finds, after a hearing, that a public school employer instituted a lockout in violation of Section 2, the Commission must fine the employer \$5,000 for each full or partial day of the lockout, and must fine each member of the employer's governing board \$250 for each full or partial day of the lockout.

The bill would retain these Commission-imposed penalties.

### Injunction & Court-Ordered Sanctions

The Act allows a public school employer to bring an action to enjoin a strike by a public school employee, and allows a bargaining representative to bring an action to enjoin a lockout by a public school employer, in the circuit court for the county in which the affected school is located. The bill also would allow the Superintendent of Public instruction to bring an action to enjoin a strike. If the Commission had made a determination that a strike or lockout existed after a hearing, that finding could not be overturned except by clear and convincing evidence.

The Act specifies that if the court having jurisdiction of an action to enjoin a strike or lockout must grant injunctive relief if the court finds that a strike or lockout has occurred, without regard to the existence of other remedies, demonstration of irreparable harm, or other factors. The bill would eliminate this language.

The bill would require the court, if it found that conditions constituting a strike or a lockout existed, and unless clear and convincing evidence had shown that the sanction would not be equitable or would duplicate a sanction imposed by the Commission, to do the following:

- For a strike, order the bargaining representative to pay a fine of \$5,000 for each full or partial day the school employee or employees engaged in the strike and order each public school employee to pay a fine in an amount equal to one day of pay for that employee for each full or partial day the employee engaged in the strike.
- For a lockout, order the public school employer to pay a fine of \$5,000 for each full or partial day of the lockout and order each member of the school's governing board to pay a fine of \$250 for each full or partial day of the lockout.
- Order the public school employees or employer acting in violation of Section 2 to end the strike or lockout.
- Award costs and attorney fees to a plaintiff who prevailed in an action.
- Grant additional equitable relief that the court found appropriate.

The order would be enforceable through the court's contempt powers.

### Proceeding to Determine Violation of Act

Under the Act, a public employee who, by concerted action with others and without the approval of his or her superior, willfully absents himself or herself from his or her position, or abstains from the proper performance of his or her duties for the purpose of inducing a change in employment conditions, compensation, or rights, or a public employee employed by a public school employer who engages in such conduct for the purpose of protesting or responding to an act alleged or determined to be an unfair labor practice, is considered to be on strike.

Before a public employer may discipline or discharge a public employee for engaging in a strike, the employee, upon request, is entitled to a determination as to whether he or she violated the Act. The request must be in writing, and filed with the officer or body having the power to remove or discipline the employee within 10 days after regular compensation has ceased or other discipline has been imposed. If a request is filed, the officer or body, within 10 days after receiving the request, must commence a proceeding to determine whether the employee violated the Act, and must make a decision within 10 days after the conclusion of the proceeding. Under the bill, the officer or body would have five days to commence a proceeding, and would have two days to issue a decision.

A public employer could consolidate employee hearings unless an employee demonstrated manifest injustice from the consolidation.

MCL 423.202a & 423.206

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have a positive, though likely small, fiscal impact on the State and could have a negative impact on public school employers that were required to pay fines for a lockout in violation of Section 2. By requiring courts, as well as the Commission, to impose sanctions, the bill could increase the number of entities fined for violations of the Act. These entities would include public school employers that were subject to a court-ordered fine of \$5,000 per day of a lockout ruled to be in violation of the Act, if the fine did not duplicate a fine ordered by the Commission.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.