

HOUSE BILL No. 5399

February 24, 2016, Introduced by Rep. Kosowski and referred to the Committee on
Commerce and Trade.

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 section 10 (MCL 423.210), as amended by 2014 PA 414,
and by adding section 10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) A public employer or an officer or agent of a
2 public employer shall not do any of the following:

3 (a) Interfere with, restrain, or coerce public employees in
4 the exercise of their rights guaranteed in section 9.

5 (b) Initiate, create, dominate, contribute to, or interfere
6 with the formation or administration of any labor organization. A
7 public school employer's use of public school resources to assist a

1 labor organization in collecting dues or service fees from wages of
2 public school employees is a prohibited contribution to the
3 administration of a labor organization. However, a public school
4 employer's collection of dues or service fees pursuant to a
5 collective bargaining agreement that is in effect on March 16, 2012
6 is not prohibited until the agreement expires or is terminated,
7 extended, or renewed. A public employer may permit employees to
8 confer with a labor organization during working hours without loss
9 of time or pay.

10 (c) Discriminate in regard to hire, terms, or other conditions
11 of employment to encourage or discourage membership in a labor
12 organization.

13 (d) Discriminate against a public employee because he or she
14 has given testimony or instituted proceedings under this act.

15 (e) Refuse to bargain collectively with the representatives of
16 its public employees, subject to section 11.

17 (2) A labor organization or its agents shall not do any of the
18 following:

19 (a) Restrain or coerce public employees in the exercise of the
20 rights guaranteed in section 9. This subdivision does not impair
21 the right of a labor organization to prescribe its own rules with
22 respect to the acquisition or retention of membership.

23 (b) Restrain or coerce a public employer in the selection of
24 its representatives for the purposes of collective bargaining or
25 the adjustment of grievances.

26 (c) Cause or attempt to cause a public employer to
27 discriminate against a public employee in violation of subsection

1 (1) (c) .

2 (d) Refuse to bargain collectively with a public employer,
3 provided it is the representative of the public employer's
4 employees, subject to section 11.

5 (3) Except as provided in subsection (4) **OR SECTION 10A**, an
6 individual shall not be required as a condition of obtaining or
7 continuing public employment to do any of the following:

8 (a) Refrain or resign from membership in, voluntary
9 affiliation with, or voluntary financial support of a labor
10 organization or bargaining representative.

11 (b) Become or remain a member of a labor organization or
12 bargaining representative.

13 (c) Pay any dues, fees, assessments, or other charges or
14 expenses of any kind or amount, or provide anything of value to a
15 labor organization or bargaining representative.

16 (d) Pay to any charitable organization or third party any
17 amount that is in lieu of, equivalent to, or any portion of dues,
18 fees, assessments, or other charges or expenses required of members
19 of or public employees represented by a labor organization or
20 bargaining representative.

21 (4) The application of subsection (3) is subject to the
22 following:

23 (a) Subsection (3) does not apply to any of the following:

24 (i) A public police or fire department employee or any person
25 who seeks to become employed as a public police or fire department
26 employee as that term is defined under section 2 of 1969 PA 312,
27 MCL 423.232.

1 (ii) A state police trooper or sergeant who is granted rights
2 under section 5 of article XI of the state constitution of 1963 or
3 any individual who seeks to become employed as a state police
4 trooper or sergeant.

5 (b) Any person described in subdivision (a), or a labor
6 organization or bargaining representative representing persons
7 described in subdivision (a) and a public employer or this state
8 may agree that all employees in the bargaining unit shall share
9 fairly in the financial support of the labor organization or their
10 exclusive bargaining representative by paying a fee to the labor
11 organization or exclusive bargaining representative that may be
12 equivalent to the amount of dues uniformly required of members of
13 the labor organization or exclusive bargaining representative.
14 Section 9(2) shall not be construed to interfere with the right of
15 a public employer or this state and a labor organization or
16 bargaining representative to enter into or lawfully administer such
17 an agreement as it relates to the employees or persons described in
18 subdivision (a).

19 (c) If any of the exclusions in subdivision (a)(i) or (ii) are
20 found to be invalid by a court, the following apply:

21 (i) The individuals described in the exclusion found to be
22 invalid shall no longer be excepted from the application of
23 subsection (3).

24 (ii) Subdivision (b) does not apply to individuals described
25 in the invalid exclusion.

26 (5) An agreement, contract, understanding, or practice between
27 or involving a public employer, labor organization, or bargaining

1 representative that violates subsection (3) is unlawful and
2 unenforceable. This subsection applies only to an agreement,
3 contract, understanding, or practice that takes effect or is
4 extended or renewed after March 28, 2013.

5 (6) The court of appeals has exclusive original jurisdiction
6 over any action challenging the validity of subsection (3), (4), or
7 (5). The court of appeals shall hear the action in an expedited
8 manner.

9 ~~—— (7) For fiscal year 2012-2013, \$1,000,000.00 is appropriated~~
10 ~~to the department of licensing and regulatory affairs to be~~
11 ~~expended to do all of the following regarding 2012 PA 349:~~

12 ~~—— (a) Respond to public inquiries regarding 2012 PA 349.~~

13 ~~—— (b) Provide the commission with sufficient staff and other~~
14 ~~resources to implement 2012 PA 349.~~

15 ~~—— (c) Inform public employers, public employees, and labor~~
16 ~~organizations concerning their rights and responsibilities under~~
17 ~~2012 PA 349.~~

18 ~~—— (d) Any other purposes that the director of the department of~~
19 ~~licensing and regulatory affairs determines in his or her~~
20 ~~discretion are necessary to implement 2012 PA 349.~~

21 (7) ~~(8)~~ A person, public employer, or labor organization that
22 violates subsection (3) is liable for a civil fine of not more than
23 \$500.00. A civil fine recovered under this section shall be
24 submitted to the state treasurer for deposit in the general fund of
25 this state.

26 (8) ~~(9)~~ By July 1 of each year, each exclusive bargaining
27 representative that represents public employees in this state shall

1 have an independent examiner verify the exclusive bargaining
2 representative's calculation of all expenditures attributed to the
3 costs of collective bargaining, contract administration, and
4 grievance adjustment during the prior calendar year and shall file
5 that verification with the commission. The commission shall make
6 the exclusive bargaining representative's calculations available to
7 the public on the commission's website. The exclusive bargaining
8 representative shall also file a declaration identifying the local
9 bargaining units that are represented. Local bargaining units
10 identified in the declaration filed by the exclusive bargaining
11 representative are not required to file a separate calculation of
12 all expenditures attributed to the costs of collective bargaining,
13 contract administration, and grievance adjustment. ~~For fiscal year~~
14 ~~2011-2012, \$100,000.00 is appropriated to the commission for the~~
15 ~~costs of implementing this subsection. For fiscal year 2014-2015,~~
16 ~~\$100,000.00 is appropriated to the commission for the costs of~~
17 ~~implementing this subsection.~~

18 (9) ~~(10)~~ Except for actions required to be brought under
19 subsection (6), a person who suffers an injury as a result of a
20 violation or threatened violation of subsection (3) may bring a
21 civil action for damages, injunctive relief, or both. In addition,
22 a court shall award court costs and reasonable attorney fees to a
23 plaintiff who prevails in an action brought under this subsection.
24 Remedies provided in this subsection are independent of and in
25 addition to other penalties and remedies prescribed by this act.

26 **SEC. 10A. (1) A PUBLIC EMPLOYER MAY ENTER INTO AN ALL-UNION**
27 **AGREEMENT WITH THE REPRESENTATIVES OF THE PUBLIC EMPLOYER'S**

1 EMPLOYEES IN A RECOGNIZED OR CERTIFIED COLLECTIVE BARGAINING UNIT
2 WITHIN THIS STATE ONLY AS PROVIDED IN THIS SECTION. AN ALL-UNION
3 AGREEMENT IS NOT EFFECTIVE UNLESS THE AGREEMENT IS APPROVED BY AN
4 AFFIRMATIVE VOTE OF A MAJORITY OF ALL THE PUBLIC EMPLOYEES ELIGIBLE
5 TO VOTE OR 3/4 OF THE PUBLIC EMPLOYEES WHO ACTUALLY VOTE, WHICHEVER
6 IS GREATER, AND IS FILED WITH THE COMMISSION. THE PUBLIC EMPLOYER,
7 THE LABOR ORGANIZATION, OR 20% OR MORE OF THE PUBLIC EMPLOYEES
8 COVERED BY THE ALL-UNION AGREEMENT MAY FILE A PETITION DEMANDING AN
9 ELECTION ON RATIFICATION OF THE AGREEMENT. THE VOTE MUST BE BY
10 SECRET BALLOT IN AN ELECTION CONDUCTED UNDER THE SUPERVISION OF THE
11 COMMISSION AS SOON AS PRACTICABLE AFTER THE PETITION IS FILED. ONLY
12 PUBLIC EMPLOYEES IN THE BARGAINING UNIT ARE ELIGIBLE TO VOTE IN THE
13 ELECTION. IF THE COLLECTIVE BARGAINING UNIT INVOLVED IS CERTIFIED
14 UNDER SECTION 9E OR BY THE NATIONAL LABOR RELATIONS BOARD, FURTHER
15 RECOGNITION OR CERTIFICATION BY ELECTION IS NOT NECESSARY FOR THE
16 COLLECTIVE BARGAINING UNIT BEFORE CONDUCTING AN ELECTION UNDER THIS
17 SUBSECTION.

18 (2) THE COMMISSION SHALL TERMINATE AN ALL-UNION AGREEMENT IF
19 ANY OF THE FOLLOWING CIRCUMSTANCES EXIST:

20 (A) THE COMMISSION FINDS THAT THE LABOR ORGANIZATION
21 UNREASONABLY REFUSED TO RECEIVE AS A MEMBER ANY EMPLOYEE OF THE
22 PUBLIC EMPLOYER. ANY INTERESTED PERSON MAY RAISE THIS ISSUE BEFORE
23 THE COMMISSION.

24 (B) THE PUBLIC EMPLOYER OR 20% OF THE PUBLIC EMPLOYEES COVERED
25 BY AN ALL-UNION AGREEMENT FILE A PETITION WITH THE COMMISSION ON A
26 FORM PROVIDED BY THE COMMISSION SEEKING TO TERMINATE THE ALL-UNION
27 AGREEMENT, AND AN ELECTION IS HELD ON THE PETITION UNDER THE

1 SUPERVISION OF THE COMMISSION AT WHICH A MAJORITY OF ALL THE PUBLIC
2 EMPLOYEES ELIGIBLE TO VOTE OR 3/4 OF THE PUBLIC EMPLOYEES WHO
3 ACTUALLY VOTE, WHICHEVER IS GREATER, DO NOT VOTE TO RETAIN THE ALL-
4 UNION AGREEMENT. A PETITION UNDER THIS SUBDIVISION MAY ONLY BE
5 FILED 120 TO 105 DAYS BEFORE EITHER THE END OF THE COLLECTIVE
6 BARGAINING AGREEMENT OR THE END OF A TRIENNIAL ANNIVERSARY DATE OF
7 THE COLLECTIVE BARGAINING AGREEMENT, AS APPLICABLE.

8 (3) THE COMMISSION SHALL PROVIDE MEANS FOR DOING ALL OF THE
9 FOLLOWING AS TO A PUBLIC EMPLOYEE PETITION UNDER SUBSECTION (1) OR
10 (2) (B) :

11 (A) SUBMITTING A CONFIDENTIAL PUBLIC EMPLOYEE PETITION FOR AN
12 ELECTION ON AN ALL-UNION AGREEMENT.

13 (B) VERIFYING THE EMPLOYMENT, STATUS, AND ELIGIBILITY OF
14 PETITIONERS.

15 (C) DETERMINING THE SUFFICIENCY OF THE PETITIONS AS TO THE 20%
16 SIGNATURE REQUIREMENT.

17 (4) THE COMMISSION MUST COMPLETE THE ELECTION ON A PETITION
18 UNDER SUBSECTION (2) (B) BY 60 DAYS BEFORE EITHER THE END OR THE
19 TRIENNIAL ANNIVERSARY OF THE COLLECTIVE BARGAINING AGREEMENT, AS
20 APPLICABLE. THE COMMISSION SHALL NOT CONDUCT AN ELECTION ON A
21 PETITION UNDER SUBSECTION (2) (B) MORE THAN ONCE DURING ANY
22 COLLECTIVE BARGAINING AGREEMENT WITH A DURATION OF 3 YEARS OR LESS,
23 OR MORE THAN ONCE EVERY 3 YEARS FOR AN AGREEMENT WITH A DURATION
24 THAT EXCEEDS 3 YEARS.

25 (5) THE IDENTITY OF A PUBLIC EMPLOYEE WHO CASTS A BALLOT IN AN
26 ELECTION OR SIGNS A PETITION SUBMITTED TO THE COMMISSION UNDER THIS
27 SECTION SHALL BE KEPT CONFIDENTIAL AND IS EXEMPT FROM DISCLOSURE

1 UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO
2 15.246.

3 (6) SECTION 9(2) SHALL NOT BE CONSTRUED TO INTERFERE WITH THE
4 RIGHT OF A PUBLIC EMPLOYER AND A LABOR ORGANIZATION TO ENTER INTO
5 OR LAWFULLY ADMINISTER AN ALL-UNION AGREEMENT AS PROVIDED IN THIS
6 SECTION.

7 (7) AS USED IN THIS SECTION, "ALL-UNION AGREEMENT" MEANS A
8 CONTRACTUAL PROVISION BETWEEN A PUBLIC EMPLOYER AND A COLLECTIVE
9 BARGAINING UNIT REPRESENTING SOME OR ALL OF THE EMPLOYEES OF THE
10 PUBLIC EMPLOYER PROVIDING FOR ANY TYPE OF UNION SECURITY AND
11 COMPELLING A PUBLIC EMPLOYEE'S FINANCIAL SUPPORT OR ALLEGIANCE TO A
12 LABOR ORGANIZATION. ALL-UNION AGREEMENT INCLUDES, BUT IS NOT
13 LIMITED TO, A CONTRACTUAL PROVISION FOR A UNION SHOP, A MODIFIED
14 UNION SHOP, AN AGENCY SHOP PROVIDING PERIODIC PAYMENT OF A SUM IN
15 LIEU OF UNION DUES, A MODIFIED AGENCY SHOP, A PRE-HIRE AGREEMENT,
16 MAINTENANCE OF DUES, OR MAINTENANCE OF MEMBERSHIP.

17 Enacting section 1. This amendatory act takes effect 90 days
18 after the date it is enacted into law.