

PUBLIC EMPLOYMENT RELATIONS (EXCERPT)
Act 336 of 1947

423.216 Violations of MCL 423.210 as unfair labor practices; remedies; procedures.

Sec. 16. Violations of the provisions of section 10 shall be deemed to be unfair labor practices remediable by the commission in the following manner:

(a) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the commission, or any agent designated by the commission for such purposes, may issue and cause to be served upon the person a complaint stating the charges in that respect, and containing a notice of hearing before the commission or a commissioner thereof, or before a designated agent, at a place therein fixed, not less than 5 days after the serving of the complaint. No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. Any complaint may be amended by the commissioner or agent conducting the hearing or the commission, at any time prior to the issuance of an order based thereon. The person upon whom the complaint is served may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the commissioner or agent conducting the hearing or the commission, any other person may be allowed to intervene in the proceeding and to present testimony. Any proceeding shall be conducted pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

(b) The testimony taken by the commissioner, agent, or the commission shall be reduced to writing and filed with the commission. Thereafter the commission upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the commission is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the commission is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the commission shall state its findings of fact and shall issue an order dismissing the complaint. No order of the commission shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a commissioner of the commission, or before examiners thereof, the commissioner, or examiners shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the commission, and if an exception is not filed within 20 days after service thereof upon the parties, or within such further period as the commission may authorize, the recommended order shall become the order of the commission and become effective as prescribed in the order.

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

(d) The commission or any prevailing party may petition the court of appeals for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction of the proceeding and shall summarily grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the commission. No objection that has not been urged before the commission, its commissioner or agent, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the commission with respect to questions of fact if supported by competent, material, and substantial evidence on the record considered as a whole shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the commission, its commissioner or agent, the court may order the additional evidence to be taken before the commission, its commissioner or agent, and to be made a part of the record. The commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the

modifying or new findings, which findings with respect to questions of fact if supported by competent, material, and substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the supreme court in accordance with the general court rules.

(e) Any party aggrieved by a final order of the commission granting or denying in whole or in part the relief sought may within 20 days of such order as a matter of right obtain a review of the order in the court of appeals by filing in the court a petition praying that the order of the commission be modified or set aside, with copy of the petition filed on the commission, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the commission. Upon the timely filing of the petition, the court shall proceed in the same manner as in the case of an application by the commission under subsection (d), and shall summarily grant to the commission or to any prevailing party such temporary relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the commission. The findings of the commission with respect to questions of fact if supported by competent, material, and substantial evidence on the record considered as a whole shall be conclusive. If a timely petition for review is not filed under this subdivision by an aggrieved party, it shall be conclusively presumed that the commission's order is supported by competent, material, and substantial evidence on the record considered as a whole, and the commission or any prevailing party shall be entitled, upon application therefor, to a summary order enforcing the commission's order.

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

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

(h) The commission or any charging party shall have power, upon issuance of a complaint as provided in subdivision (a) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where such person resides or exercises or may exercise its governmental authority, for appropriate temporary relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant to the commission or any charging party such temporary relief or restraining order as it deems just and proper.

(i) For the purpose of all hearings and investigations, which in the opinion of the commission are necessary and proper for the exercise of the powers vested in it under this section, the provisions of section 11 of Act No. 176 of the Public Acts of 1939, as amended, being section 423.11 of the Michigan Compiled Laws, shall be applicable, except that subpoenas may issue as provided in section 11 without regard to whether mediation shall have been undertaken.

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

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1965, Act 397, Imd. Eff. Oct. 26, 1965;—Am. 1976, Act 18, Imd. Eff. Feb. 20, 1976;—Am. 1976, Act 99, Imd. Eff. Apr. 27, 1976;—Am. 1977, Act 266, Imd. Eff. Dec. 8, 1977;—Am. 1978, Act 441, Imd. Eff. Oct. 9, 1978.

Constitutionality: The exercise of jurisdiction by the Michigan Employment Relations Commission under the provisions of the public employment relations act with regard to an unfair labor practice claim by a district court employee whose job is essentially administrative or clerical and not central to the administration of justice, bordering on a judicial role, does not violate the constitutional provision for separation of powers. Teamsters Union Local 214 v 60th District Court, 417 Mich 291; 335 NW2d 470 (1982).

Popular name: Public Employment Relations