

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4246

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; and to prescribe means of enforcement and penalties for the violation of the provisions of this act,"

by amending sections 1 and 15 (MCL 423.201 and 423.215), section 1 as amended by 1999 PA 204 and section 15 as amended by 2012 PA 12.

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

1 created in section 3 of 1939 PA 176, MCL 423.3.

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

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

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

16 (i) Beginning March 31, 1997, a person employed by a private
17 organization or entity that provides services under a time-limited
18 contract with the state or a political subdivision of the state is
19 not an employee of the state or that political subdivision, and is
20 not a public employee.

21 (ii) If, ~~within 30 days after the effective date of the~~
22 ~~amendatory act that added this subparagraph, BY APRIL 9, 2000, a~~
23 public school employer that is the chief executive officer serving
24 in a school district of the first class under part 5A of the
25 revised school code, 1976 PA 451, MCL 380.371 to 380.376, issues an
26 order determining that it is in the best interests of the school
27 district, then a public school administrator employed by a ~~THAT~~

1 ~~school district that is a school district of the first class under~~
2 ~~the revised school code, 1976 PA 451, MCL 380.1 to 380.1852,~~ is not
3 a public employee for purposes of this act. The exception under
4 this subparagraph applies to public school administrators employed
5 by that school district after the date of the order described in
6 this subparagraph whether or not the chief executive officer
7 remains in place in the school district. This exception does not
8 prohibit the chief executive officer or board of a school district
9 of the first class or its designee from having informal meetings
10 with public school administrators to discuss wages and working
11 conditions.

12 **(iii) AN INDIVIDUAL SERVING AS A GRADUATE STUDENT RESEARCH**
13 **ASSISTANT OR IN AN EQUIVALENT POSITION AND ANY INDIVIDUAL WHOSE**
14 **POSITION DOES NOT HAVE SUFFICIENT INDICIA OF AN EMPLOYER-EMPLOYEE**
15 **RELATIONSHIP USING THE 20-FACTOR TEST ANNOUNCED BY THE INTERNAL**
16 **REVENUE SERVICE OF THE UNITED STATES DEPARTMENT OF TREASURY IN**
17 **REVENUE RULING 87-41, 1987-1 C.B. 296 IS NOT A PUBLIC EMPLOYEE**
18 **ENTITLED TO REPRESENTATION OR COLLECTIVE BARGAINING RIGHTS UNDER**
19 **THIS ACT.**

20 (f) "Public school academy" means a public school academy or
21 strict discipline academy organized under the revised school code,
22 1976 PA 451, MCL 380.1 to 380.1852.

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

27 (h) "Public school employer" means a public employer that is

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

8 (i) "School district" means that term as defined in section 6
9 of the revised school code, 1976 PA 451, MCL 380.6, or a local act
10 school district as defined in section 5 of the revised school code,
11 1976 PA 451, MCL 380.5.

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

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

1 the full, faithful, and proper performance of the duties of
2 employment.

3 Sec. 15. (1) A public employer shall bargain collectively with
4 the representatives of its employees as described in section 11 and
5 may make and enter into collective bargaining agreements with those
6 representatives. Except as otherwise provided in this section, for
7 the purposes of this section, to bargain collectively is to perform
8 the mutual obligation of the employer and the representative of the
9 employees to meet at reasonable times and confer in good faith with
10 respect to wages, hours, and other terms and conditions of
11 employment, or to negotiate an agreement, or any question arising
12 under the agreement, and to execute a written contract, ordinance,
13 or resolution incorporating any agreement reached if requested by
14 either party, but this obligation does not compel either party to
15 agree to a proposal or make a concession.

16 (2) A public school employer has the responsibility,
17 authority, and right to manage and direct on behalf of the public
18 the operations and activities of the public schools under its
19 control.

20 (3) Collective bargaining between a public school employer and
21 a bargaining representative of its employees shall not include any
22 of the following subjects:

23 (a) Who is or will be the policyholder of an employee group
24 insurance benefit. This subdivision does not affect the duty to
25 bargain with respect to types and levels of benefits and coverages
26 for employee group insurance. A change or proposed change in a type
27 or to a level of benefit, policy specification, or coverage for

1 employee group insurance shall be bargained by the public school
2 employer and the bargaining representative before the change may
3 take effect.

4 (b) Establishment of the starting day for the school year and
5 of the amount of pupil contact time required to receive full state
6 school aid under section 1284 of the revised school code, 1976 PA
7 451, MCL 380.1284, and under section 101 of the state school aid
8 act of 1979, 1979 PA 94, MCL 388.1701.

9 (c) The composition of school improvement committees
10 established under section 1277 of the revised school code, 1976 PA
11 451, MCL 380.1277.

12 (d) The decision of whether or not to provide or allow
13 interdistrict or intradistrict open enrollment opportunity in a
14 school district or ~~of which~~ **THE SELECTION OF** grade levels or
15 schools in which to allow ~~such~~ an open enrollment opportunity.

16 (e) The decision of whether or not to act as an authorizing
17 body to grant a contract to organize and operate 1 or more public
18 school academies under the revised school code, 1976 PA 451, MCL
19 380.1 to 380.1852.

20 (f) The decision of whether or not to contract with a third
21 party for 1 or more noninstructional support services; or the
22 procedures for obtaining the contract for noninstructional support
23 services other than bidding described in this subdivision; or the
24 identity of the third party; or the impact of the contract for
25 noninstructional support services on individual employees or the
26 bargaining unit. However, this subdivision applies only if the
27 bargaining unit that is providing the noninstructional support

1 services is given an opportunity to bid on the contract for the
2 noninstructional support services on an equal basis as other
3 bidders.

4 (g) The use of volunteers in providing services at its
5 schools.

6 (h) Decisions concerning use **AND STAFFING** of experimental or
7 pilot programs ~~and staffing of experimental or pilot programs~~ and
8 decisions concerning use of technology to deliver educational
9 programs and services and staffing to provide ~~the~~**THAT** technology,
10 or the impact of ~~these~~**THOSE** decisions on individual employees or
11 the bargaining unit.

12 (i) Any compensation or additional work assignment intended to
13 reimburse an employee for or allow an employee to recover any
14 monetary penalty imposed under this act.

15 (j) Any decision made by the public school employer regarding
16 ~~the placement of teachers,~~**TEACHER PLACEMENT**, or the impact of that
17 decision on an individual employee or the bargaining unit.

18 (k) Decisions about the development, content, standards,
19 procedures, adoption, and implementation of the public school
20 employer's policies regarding personnel decisions when conducting a
21 staffing or program reduction or any other personnel determination
22 resulting in the elimination of a position, when conducting a
23 recall from a staffing or program reduction or any other personnel
24 determination resulting in the elimination of a position, or in
25 hiring after a staffing or program reduction or any other personnel
26 determination resulting in the elimination of a position, as
27 provided under section 1248 of the revised school code, 1976 PA

1 451, MCL 380.1248, any decision made by the public school employer
2 pursuant to those policies, or the impact of those decisions on an
3 individual employee or the bargaining unit.

4 (l) Decisions about the development, content, standards,
5 procedures, adoption, and implementation of a public school
6 employer's performance evaluation system adopted under section 1249
7 of the revised school code, 1976 PA 451, MCL 380.1249, or under
8 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
9 content of a performance evaluation of an employee under those
10 provisions of law, or the impact of those decisions on an
11 individual employee or the bargaining unit.

12 (m) For public employees whose employment is regulated by 1937
13 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the
14 development, content, standards, procedures, adoption, and
15 implementation of a policy regarding discharge or discipline of an
16 employee, decisions concerning the discharge or discipline of an
17 individual employee, or the impact of those decisions on an
18 individual employee or the bargaining unit. For public employees
19 whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to
20 38.191, a public school employer shall not adopt, implement, or
21 maintain a policy for discharge or discipline of an employee that
22 includes a standard for discharge or discipline that is different
23 than the arbitrary and capricious standard provided under section 1
24 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

25 (n) Decisions about the format, timing, or number of classroom
26 observations conducted for the purposes of section 3a of article II
27 of 1937 (Ex Sess) PA 4, MCL 38.83a, decisions concerning the

1 classroom observation of an individual employee, or the impact of
2 those decisions on an individual employee or the bargaining unit.

3 (o) Decisions about the development, content, standards,
4 procedures, adoption, and implementation of the method of
5 compensation required under section 1250 of the revised school
6 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
7 performance evaluation is used to determine performance-based
8 compensation under section 1250 of the revised school code, 1976 PA
9 451, MCL 380.1250, decisions concerning the performance-based
10 compensation of an individual employee, or the impact of those
11 decisions on an individual employee or the bargaining unit.

12 (p) Decisions about the development, format, content, and
13 procedures of the notification to parents and legal guardians
14 required under section 1249a of the revised school code, 1976 PA
15 451, MCL 380.1249a.

16 (4) Except as otherwise provided in subsection (3)(f), the
17 matters described in subsection (3) are prohibited subjects of
18 bargaining between a public school employer and a bargaining
19 representative of its employees, and, for the purposes of this act,
20 are within the sole authority of the public school employer to
21 decide.

22 (5) If a public school is placed in the state school
23 reform/redesign school district or is placed under a chief
24 executive officer under section 1280c of the revised school code,
25 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
26 bargaining under this act, the state school reform/redesign officer
27 or the chief executive officer, as applicable, is the public school

1 employer of the public school employees of that public school for
2 as long as the public school is part of the state school
3 reform/redesign school district or operated by the chief executive
4 officer.

5 (6) A public school employer's collective bargaining duty
6 under this act and a collective bargaining agreement entered into
7 by a public school employer under this act are subject to all of
8 the following:

9 (a) Any effect on collective bargaining and any modification
10 of a collective bargaining agreement occurring under section 1280c
11 of the revised school code, 1976 PA 451, MCL 380.1280c.

12 (b) For a public school in which the superintendent of public
13 instruction implements 1 of the 4 school intervention models
14 described in section 1280c of the revised school code, 1976 PA 451,
15 MCL 380.1280c, if the school intervention model that is implemented
16 affects collective bargaining or requires modification of a
17 collective bargaining agreement, any effect on collective
18 bargaining and any modification of a collective bargaining
19 agreement under that school intervention model.

20 (7) Each collective bargaining agreement entered into between
21 a public employer and public employees under this act after March
22 16, 2011 shall include a provision that allows an emergency manager
23 appointed under the local government and school district fiscal
24 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, to reject,
25 modify, or terminate the collective bargaining agreement as
26 provided in the local government and school district fiscal
27 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. Provisions

1 required by this subsection are prohibited subjects of bargaining
2 under this act.

3 (8) Collective bargaining agreements under this act may be
4 rejected, modified, or terminated pursuant to the local government
5 and school district fiscal accountability act, 2011 PA 4, MCL
6 141.1501 to 141.1531. This act does not confer a right to bargain
7 that would infringe on the exercise of powers under the local
8 government and school district fiscal accountability act, 2011 PA
9 4, MCL 141.1501 to 141.1531.

10 (9) A unit of local government that enters into a consent
11 agreement under the local government and school district fiscal
12 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, is not
13 subject to subsection (1) for the term of the consent agreement, as
14 provided in the local government and school district fiscal
15 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.

16 (10) If the charter of a city, village, or township with a
17 population of 500,000 or more requires and specifies the method of
18 selection of a retirant member of the municipality's fire
19 department, police department, or fire and police department
20 pension or retirement board, the inclusion of the retirant member
21 on the board and the method of selection of that retirant member
22 are prohibited subjects of collective bargaining, and any provision
23 in a collective bargaining agreement that purports to modify that
24 charter requirement is void and of no effect.

25 (11) The following are prohibited subjects of bargaining and
26 are at the sole discretion of the public employer:

27 (a) A decision as to whether or not the public employer will

1 enter into an intergovernmental agreement to consolidate 1 or more
2 functions or services, to jointly perform 1 or more functions or
3 services, or to otherwise collaborate regarding 1 or more functions
4 or services.

5 (b) The procedures for obtaining a contract for the transfer
6 of functions or responsibilities under an agreement described in
7 subdivision (a).

8 (c) The identities of any other parties to an agreement
9 described in subdivision (a).

10 (12) Nothing in subsection (11) relieves a public employer of
11 any duty established by law to collectively bargain with its
12 employees as to the effect of a contract described in subsection
13 (11)(a) on its employees.