PUBLIC EMPLOYMENT RELATIONS
Act 336 of 1947

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

History: 1947, Act 336, Eff. Oct. 11, 1947;—Am. 1965, Act 379, Imd. Eff. July 23, 1965.

Popular name: Public Employment Relations

The People of the State of Michigan enact:

423.201 Definitions; rights of public employees.

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

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

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

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

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

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

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

(*ii*) If, within 30 days after the effective date of the amendatory act that added this subparagraph, a public school employer that is the chief executive officer serving in a school district of the first class under part 5A of the revised school code, 1976 PA 451, MCL 380.371 to 380.376, issues an order determining that it is in the best interests of the school district, then a public school administrator employed by a school district that is a school district of the first class under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, is not a public employee for purposes of this act. The exception under this subparagraph applies to public school administrators employed by that school district after the date of the order described in this subparagraph whether or not the chief executive officer remains in place in the school district. This exception does not prohibit the chief executive officer or board of a school district of the first class or its designee from having informal meetings with public school administrators to discuss wages and working conditions.

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

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

(h) "Public school employer" means a public employer that is the board of a school district, intermediate school district, or public school academy; is the chief executive officer of a school district in which a school reform board is in place under part 5A of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or is the governing board of a joint endeavor or consortium consisting of any combination of school districts, intermediate school districts, or public school academies.

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

(j) "Strike" means the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment. For employees of a public

school employer, strike also includes an action described in this subdivision that is taken for the purpose of protesting or responding to an act alleged or determined to be an unfair labor practice committed by the public school employer.

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

History: 1947, Act 336, Eff. Oct. 11, 1947;—CL 1948, 423.201;—Am. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1973, Act 25, Imd. Eff. June 14, 1973;—Am. 1976, Act 18, Imd. Eff. Feb. 20, 1976;—Am. 1994, Act 112, Eff. Mar. 30, 1995;—Am. 1996, Act 543, Eff. Mar. 31, 1997;—Am. 1999, Act 204, Eff. Mar. 10, 2000.

Constitutionality: The Michigan supreme court held in In The Matter Of The Petition For A Representation Election Among Supreme Court Staff Employees, 406 Mich 647; 281 NW2d 299 (1979), that Const 1963, art III, § 2, considered with Const 1963, art IV, § 48, precludes the Michigan employment relations commission from taking jurisdiction over the Michigan supreme court.

Popular name: Public Employment Relations

423.202 Strike by public employee; lockout by public school employer.

Sec. 2. A public employee shall not strike and a public school employer shall not institute a lockout. A public school employer does not violate this section if there is a total or partial cessation of the public school employer's operations in response to a strike held in violation of this section.

History: 1947, Act 336, Eff. Oct. 11, 1947;—CL 1948, 423.202;—Am. 1994, Act 112, Eff. Mar. 30, 1995.

Popular name: Public Employment Relations

423.202a Allegation of strike by public school employees or lockout by public school employer; notice to commission; hearing; fines; deduction and disposition of fines; collection proceedings; fines additional to other penalties; injunction; reimbursement prohibited; "public school employee" defined.

Sec. 2a. (1) If a public school employer alleges that there is a strike by 1 or more public school employees in violation of section 2, the public school employer shall notify the commission of the full or partial days a public school employee was engaged in the alleged strike.

(2) If a bargaining representative alleges that there is a lockout by a public school employer in violation of section 2, the bargaining representative shall notify the commission of the full or partial days of the alleged lockout.

(3) Within 60 days after receipt of a notice made pursuant to subsection (1) or (2), the commission shall conduct a hearing to determine if there has been a violation and shall issue its decision and order. A hearing conducted under this subsection is separate and distinct from, and is not subject to the procedures and timelines of, a proceeding conducted under section 6.

(4) If, after a hearing under subsection (3), a majority of the commission finds that 1 or more public school employees engaged in a strike in violation of section 2, the commission shall fine each public school employee an amount equal to 1 day of pay for that public school employee for each full or partial day that he or she engaged in the strike and shall fine the bargaining representative of the public school employee or employees $5,000.00 for each full or partial day the public school employee or employees engaged in the strike.

(5) If, after a hearing under subsection (3), a majority of the commission finds that a public school employer instituted a lockout in violation of section 2, the commission shall fine the public school employer $5,000.00 for each full or partial day of the lockout and shall fine each member of the public school employer's governing board $250.00 for each full or partial day of the lockout.

(6) If the commission imposes a fine against a public school employee under subsection (4) and the public school employee continues to be employed by a public school employer, the commission shall order the public school employer to deduct the fine from the public school employee's annual salary. The public school employee's annual salary is the annual salary that is established in the applicable contract in effect at the time of the strike or, if no applicable contract is in effect at the time of the strike, in the applicable contract in effect at the time of the decision and order. However, if no applicable contract is in effect at either of those times, the public school employee's annual salary shall be considered to be the annual salary that applied or would have applied to the public school employee in the most recent applicable contract in effect before the strike. A public school employer shall comply promptly with an order under this subsection. A deduction under this subsection is not a demotion for the purposes of Act No. 4 of the Extra Session of 1937, being sections 38.71 to 38.191 of the Michigan Compiled Laws.

(7) The commission shall transmit money received from fines imposed under this section, and a public

school employer shall transmit money deducted pursuant to an order under subsection (6), to the state treasurer for deposit in the state school aid fund established under section 11 of article IX of the state constitution of 1963.

(8) If the commission does not receive payment of a fine imposed under this section within 30 days after the imposition of the fine, or if a public school employer does not deduct a fine from a public school employee's pay pursuant to an order under subsection (6), the commission shall institute collection proceedings.

(9) Fines imposed under this section are in addition to all other penalties prescribed by this act and by law.

(10) A public school employer may bring an action to enjoin a strike by public school employees in violation of section 2, and a bargaining representative may bring an action to enjoin a lockout by a public school employer in violation of section 2, in the circuit court for the county in which the affected public school is located. A court having jurisdiction of an action brought under this subsection shall 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. Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought under this subsection.

(11) A public school employer shall not provide to a public school employee or to a board member any compensation or additional work assignment that is intended to reimburse the public school employee or board member for a monetary penalty imposed under this section or that is intended to allow the public school employee or board member to recover a monetary penalty imposed under this section.

(12) As used in this section, "public school employee" means a person employed by a public school employer.

History: Add. 1994, Act 112, Eff. Mar. 30, 1995.

Constitutionality: That portion of MCL 423.202a(4) imposing automatic mandatory fines on bargaining representatives for strikes by their membership was struck down by the Wayne County Circuit Court in Michigan State AFL-CIO, et al v Michigan Employment Relations Commission (Docket Nos. 94-420652-CL & 94-423581-CL) on March 2, 1995. The Court found that this proviso violated due process under U.S. Const. Am XIV or Const. 1963, art 1, § 17. The Court also struck down that portion of MCL 423.202a(10) which required circuit courts, upon application by a party, to issue injunctions against strikes or lockouts without considering traditional equity factors. The Court concluded that this provision violated the separation of powers under Const 1963, art 3, § 2. No appeal was taken from these findings. Michigan State AFL-CIO v. MERC, 212 Mich. App. 472, 478. (1995)

Popular name: Public Employment Relations

423.203 Public employees; persons in authority approving or consenting to strike prohibited; participating in submittal of grievance.

Sec. 3. No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by public employees, and such person shall not authorize, approve or consent to such strike, nor shall any such person discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance in accordance with the provisions of section 7.

History: 1947, Act 336, Eff. Oct. 11, 1947;—CL 1948, 423.203;—Am. 1965, Act 379, Imd. Eff. July 23, 1965.

Popular name: Public Employment Relations

423.204 Repealed. 1965, Act 379, Imd. Eff. July 23, 1965.

Compiler's note: The repealed section declared that a public employee who violated the act abandoned and terminated his employment.

Popular name: Public Employment Relations

423.204a Application of act to state civil service employees.

Sec. 4a. The provisions of this act as to state employees within the jurisdiction of the civil service commission shall be deemed to apply in so far as the power exists in the legislature to control employment by the state or the emoluments thereof.

History: 1947, Act 336, Eff. Oct. 11, 1947;—CL 1948, 423.204a.

Popular name: Public Employment Relations

423.205 Repealed. 1965, Act 379, Imd. Eff. July 23, 1965.

Compiler's note: The repealed section pertained to conditions upon which a public employee who had violated the act could be reemployed.

Popular name: Public Employment Relations

423.206 Public employee; conduct considered to be on strike; proceeding to determine violation of act; time; decision; review; applicability of subsection (2) to penalty imposed under MCL 423.202a.

Sec. 6. (1) Notwithstanding the provisions of any other law, a public employee who, by concerted action with others and without the lawful approval of his or her superior, willfully absents himself or herself from his or her position, or abstains in whole or in part from the full, faithful and proper performance of his or her duties for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment, or a public employee employed by a public school employer who engages in an action described in this subsection for the purpose of protesting or responding to an act alleged or determined to be an unfair labor practice committed by the public school employer, shall be considered to be on strike.

(2) Before a public employer may discipline or discharge a public employee for engaging in a strike, the public employee, upon request, is entitled to a determination under this section as to whether he or she violated this act. The request shall be filed in writing, with the officer or body having power to remove or discipline the employee, within 10 days after regular compensation of the employee has ceased or other discipline has been imposed. If a request is filed, the officer or body, within 10 days after receipt of the request, shall commence a proceeding for the determination of whether the public employee has violated this act. The proceedings shall be held in accordance with the law and regulations appropriate to a proceeding to remove the public employee and shall be held without unnecessary delay. The decision of the officer or body shall be made within 10 days after the conclusion of the proceeding. If the employee involved is found to have violated this act and his or her employment is terminated or other discipline is imposed, the employee has the right of review to the circuit court having jurisdiction of the parties, within 30 days from the date of the decision, for a determination as to whether the decision is supported by competent, material, and substantial evidence on the whole record. This subsection does not apply to a penalty imposed under section 2a.

History: 1947, Act 336, Eff. Oct. 11, 1947;—CL 1948, 423.206;—Am. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1994, Act 112, Eff. Mar. 30, 1995.

Popular name: Public Employment Relations

423.207 Request for mediation of grievances; powers of commission; notice of status of negotiations; appointment of mediator.

Sec. 7. (1) Upon the request of the collective bargaining representative defined in section 11 or, if a representative has not been designated or selected, upon the request of a majority of any given group of public employees evidenced by a petition signed by the majority and delivered to the commission, or upon request of any public employer of the employees, the commission forthwith shall mediate the grievances set forth in the petition or notice, and for the purposes of mediating the grievances, the commission shall exercise the powers and authority conferred upon the commission by sections 10 and 11 of Act No. 176 of the Public Acts of 1939, as amended, being sections 423.10 and 423.11 of the Michigan Compiled Laws.

(2) At least 60 days before the expiration date of a collective bargaining agreement, the parties shall notify the commission of the status of negotiations. If the dispute remains unresolved 30 days after the notification on the status of negotiations and a request for mediation is not received, the commission shall appoint a mediator.

History: 1947, Act 336, Eff. Oct. 11, 1947;—CL 1948, 423.207;—Am. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1973, Act 25, Imd. Eff. June 14, 1973;—Am. 1976, Act 18, Imd. Eff. Feb. 20, 1976.

Popular name: Public Employment Relations

423.207a Additional mediation.

Sec. 7a. (1) In addition to mediation conducted under section 7, if a public school employer and a bargaining representative of a bargaining unit of its employees mutually agree that an impasse has been reached in collective bargaining between them, the parties may agree to participate in additional mediation under this section.

(2) If parties described in subsection (1) agree to participate in mediation under this section, then not later than 30 days after the date of impasse, each of the parties shall appoint 1 individual to represent the party in the mediation, and those 2 representatives shall select through a mutually agreed process a neutral third party to act as the mediator. The mediator and the 2 representatives shall meet to attempt to agree to a recommended settlement of the impasse.

(3) Not later than 30 days after appointment of a mediator under subsection (2), if the representatives of the parties mutually agree on a recommended settlement of the impasse, the representatives each shall present the

recommended settlement to the party he or she represents for approval.

(4) If 1 or both of the parties fail to ratify a recommended settlement described in subsection (3) within the 30-day time limit specified in subsection (3), the public school employer may implement unilaterally its last offer of settlement made before the impasse occurred. This section does not limit or otherwise affect a public school employer's ability to unilaterally implement all or part of its bargaining position as otherwise provided by law.

(5) Both parties shall share equally any expenses of mediation conducted under this section.

History: Add. 1994, Act 112, Eff. Mar. 30, 1995.

Popular name: Public Employment Relations

423.208 Repealed. 1965, Act 379, Imd. Eff. July 23, 1965.

Compiler's note: The repealed section provided penalties for inciting public employees to strike.

Popular name: Public Employment Relations

423.209 Public employees forming or joining labor organizations; collective bargaining.

Sec. 9. It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965.

Popular name: Public Employment Relations

423.210 Prohibited conduct; service fee.

Sec. 10. (1) It shall be unlawful for a public employer or an officer or agent of a public employer (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 9; (b) to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization: Provided, That a public employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay; (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization: Provided further, That nothing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in section 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative; (d) to discriminate against a public employee because he has given testimony or instituted proceedings under this act; or (e) to refuse to bargain collectively with the representatives of its public employees, subject to the provisions of section 11.

(2) It is the purpose of this amendatory act to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

(3) It shall be unlawful for a labor organization or its agents (a) to restrain or coerce: (i) public employees in the exercise of the rights guaranteed in section 9: Provided, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances; (b) to cause or attempt to cause a public employer to discriminate against a public employee in violation of subdivision (c) of subsection (1); or (c) to refuse to bargain collectively with a public employer, provided it is the representative of the public employer's employees subject to section 11.

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1973, Act 25, Imd. Eff. June 14, 1973.

Constitutionality: In Lehnert v Ferris Faculty Association, 500 US 507; 111 S Ct 1950; 114 L Ed 2d 572 (1991), the United States Supreme Court held that a collective-bargaining unit constitutionally may compel its employees to subsidize only certain union activities. "[I]n determining which activities a union constitutionally may charge to dissenting employees ... chargeable activities must (1) be 'germane' to collective-bargaining activity; (2) be justified by the government's vital policy interest in labor peace and avoiding 'free riders'; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop."

Ruling on the respondent union's disputed activities, the Court held:

(1) The respondent may not charge the funds of objecting employees for a program designed to secure funds for Michigan public education or for that portion of a union publication that reports on those activities. The Court found none of the activities "to be oriented

toward the ratification or implementation of petitioner's collective-bargaining agreement."

(2) The respondent may bill dissenting employees for their share of general collective-bargaining costs of the state or national parent union. The district court had found these costs to be germane to collective bargaining and similar support services; the court agreed with the finding.

(3) The respondent may not charge for the expenses of litigation that does not concern the dissenting employees' bargaining unit or, by extension, union literature reporting on such activities. The Court found extra-unit litigation to be proscribed by the First Amendment of the United States Constitution because it is "more akin to lobbying in both kind and effect" and not germane to a union's activities as an exclusive bargaining agent.

(4) The respondent may not bill for certain public relations activities. The Court states: "[T]he ... activities ... entailed speech of a political nature in a public forum. More important, public speech in support of the teaching profession generally is not sufficiently related to the union's collective-bargaining functions to justify compelling dissenting employees to support it. Expression of this kind extends beyond the negotiation and grievance-resolution contexts and imposes a substantially greater burden upon First Amendment rights ... ."

(5) The respondent may charge for those portions of a union publication that concern teaching and education generally, professional development, unemployment, job opportunities, union award programs, and miscellaneous matters. The Court noted that such informational support services are neither political nor public in nature and that expenditures for them benefit all, without additional infringements upon the First Amendment.

(6) The respondent may bill for fees to send delegates to state and national affiliated conventions. The Court found that participation by local members in the formal activities of the parent is an important benefit of affiliation and an essential part of a union's discharge of its duties as a bargaining agent.

(7) The respondent may charge expenses incidental to preparation for a strike which, had it occurred, would have been illegal under Michigan law. The Court, noting that the Michigan Legislature had imposed no restriction, stated there was no First Amendment limitation on such charges. The Court added that such expenses are "substantively indistinguishable from those appurtenant to collective-bargaining negotiations ... enure to the direct benefit of members of the dissenters' unit ... and impose no additional burden upon First Amendment rights."

Popular name: Public Employment Relations

423.211 Public employees; designation of bargaining representatives; grievances of individual employees.

Sec. 11. Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer: Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the bargaining representative has been given opportunity to be present at such adjustment.

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965.

Popular name: Public Employment Relations

423.212 Collective bargaining representative; petition; investigation; notice; hearing; election by secret ballot; certification of results; consent election.

Sec. 12. When a petition is filed, in accordance with rules promulgated by the commission:

(a) By a public employee or group of public employees, or an individual or labor organization acting in their behalf, alleging that 30% or more of the public employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining and that their public employer declines to recognize their representative as the representative defined in section 11, or assert that the individual or labor organization, which is certified or is being currently recognized by their public employer as the bargaining representative, is no longer a representative as defined in section 11; or

(b) By a public employer or his representative alleging that 1 or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 11; The commission shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, shall provide an appropriate hearing after due notice. If the commission finds upon the record of the hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the commission.

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1976, Act 18, Imd. Eff. Feb. 20, 1976.

Popular name: Public Employment Relations

Administrative rules: R 423.101 et seq. of the Michigan Administrative Code.

423.213 Decision as to appropriate collective bargaining unit; supervisor of fire fighting personnel.

Sec. 13. The commission shall decide in each case, to insure public employees the full benefit of their right

to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939, as amended, being section 423.9e of the Michigan Compiled Laws: Provided, That in any fire department, or any department in whole or part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor.

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1976, Act 18, Imd. Eff. Feb. 20, 1976.

Popular name: Public Employment Relations

423.214 Elections; eligibility to vote; rules; runoff election; effect of collective bargaining agreement.

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

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1976, Act 18, Imd. Eff. Feb. 20, 1976.

Popular name: Public Employment Relations

Administrative rules: R 423.101 et seq. of the Michigan Administrative Code.

423.215 Collective bargaining; duties of employer and employees' representative; prohibited subjects between public school employer and bargaining representative of employee; placement of public school in state school reform/redesign school district or under chief executive officer; conditions.

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

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

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

(a) Who is or will be the policyholder of an employee group insurance benefit. This subdivision does not affect the duty to bargain with respect to types and levels of benefits and coverages for employee group insurance. A change or proposed change in a type or to a level of benefit, policy specification, or coverage for employee group insurance shall be bargained by the public school employer and the bargaining representative before the change may take effect.

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

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

(d) The decision of whether or not to provide or allow interdistrict or intradistrict open enrollment opportunity in a school district or of which grade levels or schools in which to allow such an open enrollment opportunity.

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

(f) The decision of whether or not to contract with a third party for 1 or more noninstructional support

services; or the procedures for obtaining the contract for noninstructional support services other than bidding described in this subdivision; or the identity of the third party; or the impact of the contract for noninstructional support services on individual employees or the bargaining unit. However, this subdivision applies only if the bargaining unit that is providing the noninstructional support services is given an opportunity to bid on the contract for the noninstructional support services on an equal basis as other bidders.

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

(h) Decisions concerning use of experimental or pilot programs and staffing of experimental or pilot programs and decisions concerning use of technology to deliver educational programs and services and staffing to provide the technology, or the impact of these decisions on individual employees or the bargaining unit.

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

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

(5) If a public school is placed in the state school reform/redesign school district or is placed under a chief executive officer under section 1280c of the revised school code, 1976 PA 451, MCL 380.1280c, then, for the purposes of collective bargaining under this act, the state school reform/redesign officer or the chief executive officer, as applicable, is the public school employer of the public school employees of that public school for as long as the public school is part of the state school reform/redesign school district or operated by the chief executive officer.

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

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

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

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1994, Act 112, Eff. Mar. 30, 1995;—Am. 2009, Act 201, Imd. Eff. Jan. 4, 2010.

Popular name: Public Employment Relations

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

423.217 Bargaining representative or education association; prohibited conduct; violation of section; "education association" defined.

Sec. 17. (1) A bargaining representative or an education association shall not veto a collective bargaining agreement reached between a public school employer and a bargaining unit consisting of employees of the public school employer; shall not require the bargaining unit to obtain the ratification of an education association before or as a condition of entering into a collective bargaining agreement; and shall not in any other way prohibit or prevent the bargaining unit from entering into, ratifying, or executing a collective bargaining agreement. The power to decide whether or not to enter into, ratify, or execute a collective bargaining agreement with a public school employer rests solely with the members of the bargaining unit who are employees of the public school employer, and shall not be delegated to a bargaining representative or an education association or conditioned on approval by a bargaining representative or an education association.

(2) If an education association, a bargaining representative, or a bargaining unit violates this section, the board of a public school employer or any other person adversely affected by the violation of this section may bring an action to enjoin the violation of this section in the circuit court for the county in which the plaintiff resides or the circuit court for the county in which the affected public school employer is located. Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought under this section.

(3) As used in this section, "education association" means an organization, whether organized on a county, regional, area, or state basis, in which employees of 1 or more public school employers participate and that exists for the common purpose of protecting and advancing the wages, hours, and working conditions of the organization's members.

History: Add. 1994, Act 112, Eff. Mar. 30, 1995.