

PENALTIES FOR PUBLIC SCHOOL UNIONS IN EVENT OF STRIKES, OR ENCOURAGING STRIKES

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House Bill 4466 (Substitute H-2)

Sponsor: Rep. Paul Scott

Committee: Education

First Analysis (5-3-11)

BRIEF SUMMARY: The bill specifies penalties for public school employees and labor organizations who solicit, encourage, conspire or participate in work stoppages (customarily called strikes), and for public school employers and school board members who deny their employees the opportunity to work (customarily called lockouts). Under the bill, a bargaining unit whose officials encouraged strikes would be de-certified for up to five years.

FISCAL IMPACT: A fiscal analysis is in progress.

THE APPARENT PROBLEM:

In Michigan, public school employees have the statutory right to collectively bargain--a right extended to all public employees in the state when the Public Employment Relations Act was amended in 1965.

The 1965 version of the Public Employment Relations Act repealed the "meet and confer" provision of the original law, enacted in 1937, replacing it with the right to collective bargaining in all matters concerning wages, hours, and other employment-related terms and conditions. In one way the original 1937 act and the amended 1965 act were the same: both acts prohibited public sector strikes. However, the 1965 act repealed the original act's penalty of automatic discharge for strikers. Moreover, the new act allowed government employees to select an exclusive bargaining agent. Michigan teachers became the first public sector employee group to organize, and the Michigan Education Association (MEA) became their officially recognized bargaining representative. By 1968, more than 75 percent of state school districts had recognized either the MEA or the Michigan Federation of Teachers (MFT) as their labor representative.

The Legislative Service Bureau's Research Report Vol. 24, No. 4, published in December 2004 concerning collective bargaining and teacher tenure notes: "From the 1970s to the early 1990s, MEA and MFT won dramatic gains in teacher salaries, insurance benefits, and retirement packages for their membership because of their use of the strike, in combination with the practice of pattern bargaining. Using this stratagem, concessions gained from striking school districts were matched by neighboring school districts. From 1965 to 1993, there were 676 teacher strikes--an average of 23.3 a year in Michigan. In contrast, over the same period of time, police and firemen staged one strike; college and

university employees struck 55 times (an average of 1.8 strikes a year); and all other public sector groups struck a total of 146 times (an average of 5 strikes per year)."

In an effort to curtail teacher strikes, the legislature amended the Public Employee Relations Employment Act again in 1994, to impose fines for striking teachers. Under current law, each public school employee is docked one day's pay for each full or partial day on strike. In addition, the employee's bargaining representative--the MEA or the MFT--is fined \$5,000 for each full or partial day of a strike. After this change to the law, teacher strikes--with very few exceptions--stopped.

Since 1994, there have been three strikes in two school districts. Two of those three strikes occurred in Detroit--one in 1999 following the state takeover of the Detroit Public Schools when the 11,500-member Detroit Federation of Teachers struck for nine days, and again in 2006 when the 9,500-member Detroit Federation of Teachers began a strike a full week before school was set to start, and continued their work stoppage for 16 days.

Then, three years ago, in 2008, the 850 teachers in the Wayne-Westland Community School District went on strike for four days. That school strike--the first in Michigan outside of Detroit in 14 years--began in the early morning of October 6 before the start of the school day, but after 4,000 students at two district high schools were making their way to campus. During committee testimony, the school superintendent noted that the strike cost district taxpayers more than one million dollars, and it disrupted his district for several months. According to teachers and some students, the reasons for the strike included a reduction in health benefits, and unacceptably high class size. While according to the school superintendent, the sole reason for the strike was a move the previous spring by the school board to replace the MESSA health insurance carrier with a lower-cost option that promised to save the school district nearly \$1.3 million each year.

In the 1999, 2006, and 2008 strikes in Detroit and Wayne-Westland, teachers lost their pay and were fined for the days they were on strike, but they returned to work without further disciplinary penalties. Generally, further disciplinary measures are not pursued by the school district superintendents or the local judges who issue injunctions and order school personnel back to work, because each striking teacher has the right to an individual due process hearing before the Michigan Employment Relations Commission (MERC). Because the number of strikers overwhelms the capacity of the administrative hearing process, disciplinary measures beyond lost pay and fines are not sought.

Legislation has been introduced which would allow school districts to consolidate employee hearings before the Michigan Employment Relations Commission, and also prohibit a labor organization and any agent of a labor organization from soliciting or encouraging any public employee to strike, or conspiring with any other person to cause a strike. The legislation also provides penalties if an individual employee, labor organization, or its agent violates the law. Those penalties would require a court to impose a fine of \$250 for each day an individual striker stayed out of work (as is now the case), and also penalize the bargaining representative by (1) immediately stopping the collection of dues or service fees for five years; (2) de-certifying the existing union by

ordering the incumbent labor representative, its parent organization, and any affiliates ineligible to represent the bargaining unit for five years; and (3) ordering the Michigan Employment Relations Commission to conduct, within 90 days, an election on the question of certifying a different bargaining representative to represent the bargaining unit.

THE CONTENT OF THE BILLS:

The bill specifies penalties for public school employees and labor organizations who solicit, encourage, conspire, or participate in work stoppages (customarily called strikes), and for public school employers and school board members who deny their employees the opportunity to work (customarily called lockouts). Generally, the bill would do the following:

- Allow school districts to consolidate employee hearings before the Michigan Employment Relations Commission.
- Prohibit a labor organization and any agent of a labor organization from soliciting or encouraging any public employee to strike, or conspiring with any other person to cause a strike.
- Provide penalties if an individual employee, labor organization, or its agent violates the law. Those penalties would require a court to impose a fine of \$250 for each day an individual striker stayed out of work (as is now the case), and also penalize the bargaining representative by (1) immediately stopping the collection of dues or service fees for five years; (2) de-certifying the existing union by ordering the incumbent labor representative, its parent organization, and any affiliates ineligible to represent the bargaining unit for five years; and (3) ordering the Michigan Employment Relations Commission to conduct, within 90 days, an election on the question of certifying a different bargaining representative to represent the bargaining unit.

A more detailed description of the bill follows.

House Bill 4466 (H-2) would amend the Michigan Public Employment Relations Act (MCL 423.202a, 423.206, 423.208, and 423.210) to set penalties for public school employers and employee unions during lockouts and strikes.

Strike and Lockout Notifications/Allegations

House Bill 4466 (H-2) would require the state school superintendent to notify the Public Employment Relations Commission of the full or partial days a public school employee was engaged in a strike. Further, the bill would allow, but not require, a parent of a student in the school district to notify the commission of a public school employee who was engaged in the strike.

Now under the law, a public school employer can allege a strike which is in violation of the Public Employment Relations Act, and notify the Public Employment Relations Commission of the days (or partial days) an employee was engaged in the alleged strike.

House Bill 4466 (H-2) would retain this provision, but extend it to also require that the state school superintendent be notified. Similarly, if a bargaining representative alleges that there is a lockout by a public school employer, he or she must notify the commission of the full or partial days of the alleged lockout. House Bill 4466 (H-2) would retain this provision unchanged.

Now under the law, within 60 days after receiving a notice of an alleged strike or lockout, the commission must conduct a hearing to determine if there has been a violation of the law, and then must issue its decision and order. House Bill 4466 (H-2) would retain this provision but shorten the 60 days to two days--so that within two days after receiving a notice of the strike or lockout, the commission would have to conduct a hearing to determine if there had been a violation of the law, and then would have to issue its decision and order. Further, House Bill 4466 (H-2) would require that the hearing offer an opportunity for the bargaining representative, public school employer, or public school employee to offer testimony or other evidence to support or contest the allegation of a strike or lockout.

Penalties for Strikes Imposed by the Public Employee Relations Commission

Under current law, if a majority of the commission finds that public school employees have engaged in a strike, the commission fines each employee an amount equal to one day of pay for each full or partial day the employee was engaged in the strike. House Bill 4466 (H-2) would retain this provision. Further, the bargaining representative of the school employees is fined \$5,000 for each full or partial day of the strike. House Bill 4466 (H-2) would eliminate this provision.

Instead, of a fine for the bargaining representative, House Bill 4466 (H-2) would require the commission, in the instances where prohibited conduct had occurred, to do all of the following:

- Order the public school employer to immediately stop collecting any membership dues or services fees being paid to any bargaining representative for a period of five years.
- Order that the incumbent bargaining representative, its parent organization, and any affiliates would not be eligible to represent the bargaining unit for five years.
- Conduct an election on the question of certifying a different bargaining representative to represent the bargaining unit. Under the bill, that election would be conducted within 90 days after the bargaining representative was de-certified.

The law now allows the Public Employment Relations Commission to order a public school employer to deduct the fine from an employee's annual salary, and the employer to comply promptly with such an order. House Bill 4466 (H-2) would retain this provision, unchanged. Under current law, any money collected from fines is deposited by the state treasurer in the State School Aid Fund, and if payment of an imposed fine is not received within 30 days, the commission begins collection proceedings. House Bill 4466 (H-2) would also retain these provisions unchanged.

Penalties for Lockouts Imposed by the Public Employee Relations Commission

Currently the law specifies that, if it is determined (after a hearing) that a public school employer instituted a lockout, the employer is fined \$5,000 a day, and each member of the school governing board is fined \$250 a day for each full or partial day of the lockout. House Bill 4466 (H-2) would retain both of these provisions.

Actions to Enjoin Strikes and Lockouts

Now under the law, a public school employer can bring an action to enjoin a strike by public school employees, and a bargaining representative can bring an action to enjoin a lockout in the circuit court for the county in which the public school is located. House Bill 4466 (H-2) would retain this provision, but also allow an action to enjoin a strike to be brought by the state school superintendent. Further, the bill specifies that if the Public Employment Relations Commission had made a determination that a strike or lockout existed after conducting its hearing, then that finding could not be overturned by the circuit court, except by clear and convincing evidence.

Court Actions against Strikes and Lockouts

Currently, a circuit court having jurisdiction must grant injunctive relief if the court finds that a strike or lockout has occurred (without regard to the existence of other remedies, demonstration of irreparable harm, or other factors). Further, the law specifies that failure to comply with an order of the court can be punished as contempt, and finally, the court is required to award court costs and reasonable attorney fees to a plaintiff who prevails in the action. House Bill 4466 (H-2) would eliminate these provisions.

Instead, House Bill 4466 (H-2) specifies that if the court having jurisdiction finds that conditions constituting a strike or a lockout exist (and unless clear and convincing evidence has shown that the sanction would not be equitable or the sanction would duplicate a sanction imposed by the commission for the same activity), then the court would be required to take all of the following actions:

- For a strike in violation of Section 2 of the act, all of the following:
 - (1) If the public school employer collected membership dues or service fees for payment to the bargaining representative, order the public school employer to immediately stop collecting those dues or service fees for five years after a determination that prohibited conduct had occurred.
 - (2) Order that the incumbent labor representative, its parent organization, and any affiliates would not be eligible to represent the bargaining unit for five years after a determination that the prohibited conduct occurred.
 - (3) Order the Michigan Employment Relations Commission to conduct an election of the question of certifying a different bargaining representative to represent the bargaining unit. The election would be conducted within 90 days after the bargaining representative was decertified under paragraph (2) above.
- For a lockout in violation of Section 2, (1) order the public school employer to pay a fine of \$5,000 for each full or partial day of the lockout, and (2) each

member of the public school governing board to pay a fine of \$250 for each full or partial day of the lockout.

- Order the public school employees or public school employer to end the strike or lockout.
- Award costs and attorney fees to a plaintiff who prevails in the action.

Finally, House Bill 4466 (H-2) specifies that an order issued under this section of the law would be enforceable through the court's contempt power.

No Reimbursement for Monetary Penalties

A public school employer is currently prohibited from providing compensation or additional work assignments to any employee or board member, in order to reimburse them for the monetary penalties imposed for strikes or lockouts. House Bill 4466 (H-2) would retain this provision.

Description of a Strike

The law describes the behavior of a public school employee that is considered to be a strike, and House Bill 4466 (H-2) would retain that provision. That is, a public employee who, by concerted action with others and without the lawful approval of his or her superiors, 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 of the law 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, is considered to be on strike.

Proceedings to Determine if Violations Have Occurred

Before a public employer can discipline or discharge a public employee for engaging in a strike, the employee is entitled to a determination as to whether he or she violated the act. A request for that determination is 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 stopped or other discipline has been imposed. If a request is filed, the officer or body begins a proceeding to make the determination within 10 days after receiving the request. House Bill 4466 (H-2) would retain this provision, but shorten the deadline from 10 days to five days, so that the officer or body would have to commence a proceeding within five days. Now under the law, the officer must make a decision within 10 days. House Bill 4466 (H-2) would shorten the deadline from 10 days to two days, so that the officer or body would have to make its determination with two days after the conclusion of the proceeding.

Currently, if a public employee is found to have violated the act and his or her employment is terminated or other discipline is imposed, the public employee has the right of review to the circuit court within 30 days of the decision, for a determination as

to whether the decision is supported by competent, material, and substantial evidence. House Bill 4466 (H-2) would retain this provision.

Consolidation of Hearings

House Bill 4466 (H-2) specifies that a public employer could consolidate employee hearings described above, unless the public employee demonstrated manifest injustice from the consolidation.

Prohibit Strike-Related Actions by Labor Organization

In addition, House Bill 4466 (H-2) would prohibit a labor organization and any agent of a labor organization from doing either of the following:

- Soliciting or encouraging any public employee to strike in violation of Section 2.
- Conspiring with any other person to cause a strike in violation of Section 2.

Under the House Bill 4466 (H-2), if a labor organization or agent of a labor organization violated this section, the court would be required to sanction the labor organization as provided in Sections 2a(5) or (11)(a), above. That is, the court would be required to impose on each striking school employee a \$250 fine for each day of the strike, and take the following action to penalize the bargaining representative:

- (1) If the public school employer collected membership dues or service fees for payment to the bargaining representative, order the public school employer to immediately stop collecting those dues or service fees for five years after a determination that prohibited conduct had occurred.
- (2) Order that the incumbent labor representative, its parent organization, and any affiliates would not be eligible to represent the bargaining unit for five years after a determination that the prohibited conduct occurred.
- (3) Order the Michigan Employment Relations Commission to conduct an election of the question of certifying a different bargaining representative to represent the bargaining unit. The election would be conducted within 90 days after the bargaining representative was decertified under (2) above.

Employer Cannot Interfere with Collective Bargaining Rights

Currently under the law, it is unlawful for a public employer to interfere with, restrain, or coerce public employees in the exercise of their rights to collectively bargain. House Bill 4666 (H-2) would retain this provision. Further, the law now prohibits an employer from interfering with the formation of any labor organization, and provides that a public employer cannot be prohibited from allowing employees to confer with the labor organization during working hours without loss of time or pay. House Bill 4666 (H-2) retains this provision, but specifies that a public employer may permit employees to confer with a labor organization during working hours without loss of time or pay.

Now under the law, a public employer cannot discriminate with regard to hiring, or the terms or conditions of employment, in order to encourage or discourage membership in a labor organization, and the law specifies that nothing in the act or any Michigan law shall

preclude a public employer from making an agreement with an exclusive bargaining representative 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 required of members of that exclusive bargaining representative. House Bill 4666 (H-2) retains this provision, specifying that this act or other law of this state does not preclude (rather than "nothing...shall preclude") an agreement with an exclusive bargaining representative.

Now under the law, a public employer cannot refuse to bargain collectively with the representatives of its public employees. House Bill 4666 (H-2) would retain this provision.

Collection of Membership Dues

Currently the law affirms that it is the continuing public policy of Michigan that the stability and effectiveness of labor relations in the public sector require, if negotiated, that all employees in the bargaining unit share fairly in the financial support of their exclusive bargaining representative by paying a service fee that may be equivalent to the amount of dues required of the bargaining unit's members. House Bill 4666 (H-2) would retain this provision. The bill further specifies: "However, if public employees engage in a strike in violation of Section 2 of the act, including conduct described in section 6(1), the public employer shall immediately stop collecting membership dues and service fees pending a hearing under Section 2a."

Prohibited Actions by Labor Organization

Finally, the law currently specifies, and House Bill 4666 (H-2) would affirm, provisions that make it unlawful for a labor organization or its agents to (1) restrain or coerce public employees in the exercise of their rights under the act; (2) restrain or coerce a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances; (3) cause a public employer to discriminate against a public employee; and (4) refuse to bargain collectively with a public employer, provided it is the representative of the public employer's employees. All of these provisions would be retained under the proposed legislation,

ARGUMENTS:

For:

Proponents of the bill argue that this new law is needed because the Michigan Education Association has threatened to strike in school districts throughout Michigan. This bill, if enacted into law, can prevent those strikes.

Those who favor the bill note that these penalties are needed in law, because the president of the Michigan Education Association issued a letter to all local MEA presidents and members in mid-March 2011. That letter alerted MEA members that "we are under assault in Lansing," and it noted that dozens of bills were being considered on a daily basis at the Capitol that are "outright attacks on our students, our members, our communities and our future." The letter briefly described those "outright attacks": (1)

"Slashing at least \$470 per pupil from each school district in the state..."; (2) the elimination of the Earned Income Tax Credit and pension tax exemptions, "effectively raising taxes on the working poor and on retirees, all to pay for a massive business tax cut"; (3) "emergency manager legislation that will destroy the collective bargaining rights of our members"; (4) a bill that would "freeze step increases and district health care costs when a contract expires...and ban any retroactive contract settlements"; (5) a bill that would "outsource all transportation, custodial, and food service work"; and (6) bills that "would require all school employees to pay at least 20 percent of their health insurance premiums and slash your salary by 5 percent." The letter then advised MEA members, "To stop these assaults, we must stand up!" and it warned them that "we must take action accordingly." The letter then told MEA members that all local presidents would call a general membership meeting before April 15, "at which you'll be asked to take a vote giving authority to MEA to initiate crisis activities up to and including job action." The letter continued: "Let me be clear on what this vote means: it authorizes MEA to engage in significant activities--up to and including a work stoppage--that will increase the pressure on our legislators." The letter noted: "This is a very serious request that reflects the severity of the situation in which we find ourselves," and further: "This is an unprecedented action appropriate for unprecedented times."

Proponents of the bill note that public employee strikes are unequivocally illegal--and they have been illegal for decades. Indeed, strikes in the public sector are expressly prohibited in the Michigan Public Employment Relations Act, in Section 2. Despite this prohibition, which has been in effect since 1937, proponents of the bill say that the March 2011 MEA letter constitutes a strike threat--a direct violation of the law. To head off any strikes in school districts, they argue that stiffer penalties are needed for those who encourage, conspire to, or participate in work stoppages. This bill provides those penalties.

First, the bill would de-certify any union whose bargaining unit encourages a strike, and prohibit that bargaining unit from representing a school district's employees for five years. Second, if teachers in a school district participated in a work stoppage, the bill would allow school districts to consolidate the due process hearings for all strikers, rather than guarantee individual hearings as is now the case. Consolidated hearings would speed-up and make far less costly the hearings now required before an administrative law judge. The streamlined hearing process would then allow school districts to discipline strike participants quickly, and, if necessary, replace the striking personnel in a way that minimizes disruption in their students' classrooms.

Against:

Opponents of the bill make three arguments: First, they say the bill is an overreaction to the March 2011 MEA Action Alert, issued to all Michigan Education Association members. They point-out that the MEA is a member-driven organization, and that in order for the MEA leadership to gauge the feelings of its members, it must conduct a survey, allowing members to express their views on a range of actions and responses to state education policy. Opponents of the bill note that the penalties already in the Public Employment Relations Act are sufficient--that is, \$250-a-day fines for strikers, and

\$5,000-a-day fines for striking unions. Further, they argue those penalties have had a significant deterrent effect. Indeed, there have been only three teacher strikes in Michigan since 1994--two in Detroit (in 1999 after the state takeover of the public school system, and again in 2006), and one in Wayne-Westland in 2008. In contrast, and before those penalties went into effect, Michigan school districts experienced 676 school strikes between 1965 and 1993--on average, more than 20 every year.

Second, opponents of the bill say this legislation is part of a regional strategy to wage an assault on working people and their public sector unions, because those unions give workers a voice in collective bargaining. Opponents argue that this bill--and many others introduced during this legislative session in Michigan and throughout the Midwest--further erode the dignity of public workers and are part of a larger strategy designed to deprive public employees of a voice.

These opponents to the bill argue that Michigan teachers and school personnel have long demonstrated that common problems deserve common solutions; that to achieve the common good both teachers and school administrators must work together. They note that throughout the state, unionized public sector employees, including teachers, have made wage and benefit concessions, and helped local school officials to downsize their organizations, privatize services, and to consolidate operations. Many who teach and do other important jobs in public schools choose their professions in order to serve. They view their role as one that better ensures social justice in the society. These teachers and school personnel believe it is their responsibility to stand up for just and fair allocation of resources.

Opponents of this bill observe that in the communities where working people are organized and accustomed to having a voice in their workplace, the legislation to silence them will provoke labor strife. The resulting labor unrest and resistance will make much needed school reform more difficult, rather than easier. Opponents of the bill also say unions are not the problem; they are the beginning of the solution. They argue that common solutions to educational problems will not be possible if the atmosphere in a school community is brutally divisive and bitterly hostile. When teachers' expertise is dismissed, their pay and benefits unilaterally reduced, their unions threatened with decertification, their voices silenced, and their dignity affronted, they cannot apply their energy to solving educational problems.

Third, some opponents of the bill argue that it should be amended in two ways: an enacting section should be added which would tie-bar the bill to House Joint Resolution J which forfeits legislators' salaries if the legislature fails to present budgets to the government by July 1; and further, a second enacting section should be added which would tie-bar the bill to House Joint Resolution S, a resolution that would make collective bargaining a constitutional right for workers who organized bargaining units. With these tie-bars, the bill could not go into effect, unless the amendments to the Michigan constitution were also enacted into law.

POSITIONS:

Wayne Westland Schools supports the bill. (4-20-11)

The Michigan Association of School Boards supports the bill. (4-20-11)

The American Federation of Teachers opposes the bill. (4-20-11)

The Michigan Education Association opposes the bill. (4-20-11)

The Michigan State Employees Association opposes the bill. (4-20-11)

The Service Employees International Union (SEIU) opposes the bill. (4-20-11)

The American Federation of State, County, and Municipal Employees (AFSCME) Council 25 opposes the bill. (4-27-11)

The AFL-CIO opposes the bill. (4-27-11)

The Mackinac Center is neutral on the bill. (4-20-11)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.