

Act No. 76
Public Acts of 2012
Approved by the Governor
April 9, 2012
Filed with the Secretary of State
April 10, 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Hildenbrand, Pavlov, Booher, Colbeck, Kowall, Robertson, Emmons, Proos, Brandenburg, Walker, Caswell, Casperson, Jones, Hansen, Meekhof, Moolenaar, Pappageorge, Green, Marleau, Jansen, Schuitmaker, Hune, Nofs and Richardville

ENROLLED SENATE BILL No. 1018

AN ACT to amend 1947 PA 336, entitled "An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; to require certain provisions in collective bargaining agreements; to prescribe means of enforcement and penalties for the violation of the provisions of this act; and to make appropriations," by amending sections 1 and 14 (MCL 423.201 and 423.214), section 1 as amended by 2012 PA 45.

The People of the State of Michigan enact:

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) A person employed by a private organization or entity who provides services under a time-limited contract with this state or a political subdivision of this state or who receives a direct or indirect government subsidy in his or her private employment is not an employee of this state or that political subdivision, and is not a public employee. This provision shall not be superseded by any interlocal agreement, memorandum of understanding, memorandum of commitment, or other document similar to these.

(ii) If, by April 9, 2000, 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 that school district 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.

(iii) An individual serving as a graduate student research assistant or in an equivalent position and any individual whose position does not have sufficient indicia of an employer-employee relationship using the 20-factor test announced by the internal revenue service of the United States department of treasury in revenue ruling 87-41, 1987-1 C.B. 296 is not a public employee entitled to representation or collective bargaining rights under this act.

(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.

Sec. 14. (1) 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, if 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 that was not prematurely extended and that is of fixed duration. A collective bargaining agreement does not bar an election upon the petition of persons not parties thereto if more than 3 years have elapsed since the agreement's execution or last timely renewal, whichever was later.

(2) An election shall not be directed for, and the commission or a public employer shall not recognize, a bargaining unit of a public employer consisting of individuals who are not public employees. A bargaining unit that is formed or recognized in violation of this subsection is invalid and void.

Enacting section 1. This amendatory act is curative, reflects the original intent of the legislature, and is retroactive.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor