

STRIKES AND LOCKOUTS: IMPOSE PENALTIES FOR ALL PUBLIC EMPLOYEES AND EMPLOYERS

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House Bill 5023 (Substitute H-1)

Sponsor: Rep. Lisa Posthumus Lyons

Committee: Oversight, Reform, and Ethics

First Analysis (2-15-12)

BRIEF SUMMARY: The bill would amend the Public Employment Relations act impose on all public employees covered by the act who engage in a strike, and all public employers who institute a lockout, a similar set of procedures and penalties that now apply in statute to public school employees and public school employers. (Note: The act does not apply to employees in the state classified civil service.)

FISCAL IMPACT: House Bill 5023 may have an indeterminate fiscal impact on the Michigan Employment Relations Commission (MERC) and the Bureau of Employment Relation (BER), which supports the administration of the MERC. See *Fiscal Information*.

THE APPARENT PROBLEM:

In Michigan, public 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 The 1965 version of the Public Employment Relations Act repealed the "meet and confer" provision of the original law, enacted in 1937, replacing it with the right to collective bargaining in all matters concerning wages,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 However, the 1965 act repealed the original act's penalty of automatic discharge for strikers. The new act also 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.

Other public employees at the state and local levels of government are represented today by a host of labor organizations, including but not limited to the American Federation of State, County, and Municipal Employees (AFSCME), the United Auto Workers, the AFL-CIO, the International Brotherhood of Electrical Workers (IBEW), the Michigan Corrections Organization, the Utility Workers Union of America, Michigan Professional Fire Fighters, Michigan Laborers, the Michigan Nurses Association, the IUOE, the Deputy Sheriffs Association, the Teamsters, POAM, and the Michigan Employees Association.

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 in 1994 to impose fines for striking teachers. Under current law, each public school employee can be docked one day's pay for each full or partial day on strike. In addition, the statute says the employee's bargaining representative, the MEA or the MFT, can be 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. Strikes among other public sector workers have always been rare, and continue to be so.

Since 1994, there have been only 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 then-11,500-member Detroit Federation of Teachers struck for nine days, and again in 2006 when the then-9,500-member DFT began a strike a week before school was set to start, and continued their work stoppage for 16 days. Then in 2008, the 850 teachers in the Wayne-Westland Community School District went on strike for four days.

In the 1999, 2006, and 2008 strikes in Detroit and Wayne-Westland, teachers lost 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 to make the disciplinary provisions that now apply only to public school strikes and lockouts apply to all public employees and employers subject to PERA and to specify that all striking public employees would be subject to a hearing before the Employment Relations Commission that is separate and distinct from the individual due-process hearings conducted under Section 6 of PERA, and that are not subject to the procedures of Section 6. This separate hearing is held to determine whether the law prohibiting strikes has been violated, and to issue a finding as to whether the bargaining representative ratified, participated in, assisted, or encouraged the strike, before assessing a fine.

THE CONTENT OF THE BILL:

The bill would impose on all public employees covered under the Public Employment

Relations Act who engage in a strike, and all public employers who institute a lockout, a similar set of procedures and penalties that now apply only to public school employees and public school employers.

The Public Employment Relations Act prohibits public employees from striking and prohibits public school employees from instituting lockouts.

The act also, in Section 2a, provides a process for determining if an illegal strike or lockout has occurred and provides fines and penalties. The section, however, applies only to public school employees and public school employers.

House Bill 5023 would add a new Section 2b to PERA; this section would be substantially similar to the existing Section 2a, but it would apply to all public employees and public employers covered under PERA.

Under the bill, "public employer" is defined to mean a county, township, village, city, authority, school district, or other political subdivisions of this state and includes any entity jointly created by two or more public employers. (This term has not previously been defined in the act.)

The act already contains a definition of "public employee," which refers to "a person holding a position by appointment or employment in the government of this state, in the government of one 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." The Public Employment Relations Act does not apply to the state classified workforce.

The chief differences regarding fines between existing Section 2a and proposed Section 2b are as follows: **First**, under the existing section of PERA concerning public schools, each school board member can be assessed a \$250 daily fine for a lockout and a school employer is prohibited from reimbursing a school board member for any monetary penalty imposed under the act. Under House Bill 5023 (H-1), no comparable penalty exists in proposed Section 2b for the governing board members of other public employers.

Second, under existing Section 2a of PERA, which applies to public schools, any fines collected by the Employment Relations Commission are deposited in the School Aid Fund. Under new Section 2b, any fines collected would be deposited in the state General Fund. [Note: Since school districts appear to be covered under both existing Section 2a and proposed new Section 2b, it is not clear where the statute intends fines from school employers and employees to go.]

House Bill 5023 (H-1) also repeats language similar to that currently found in Section 2a that requires the Public Relations Commission, within 60 days of receiving a notice of a strike or lockout, to conduct a hearing to determine if there has been a violation of the law, and issue its decision and order. Such a hearing would be separate and distinct from a proceeding under Section 6, and would not be subject to the procedures and timelines of Section 6 of the act. (Section 6 is described later.)

If after this hearing, a majority of the commission finds that one or more public employees engaged in a strike, then the commission would fine each employee an amount equal to one day of pay for each full or partial day of the strike, and would impose a fine of \$5,000 per day on the bargaining representative of the employees, if the commission found the bargaining representative ratified, participated in, assisted, or encouraged the strike. (This underlined language does not appear in Section 2a.) An employee fine would be deducted by the employer from the employee's salary, if the employee continued to be employed by that employer. If after this hearing, a majority of the commission finds that a public employer instituted a lockout, the commission would fine the public employer \$5,000 for each full or partial day of the lockout.

A public employer could not provide an employee any compensation or additional work assignment intended to reimburse the employee for a monetary penalty or intended to allow an employee to recover a monetary penalty.

[As noted, these procedures would not fall under Section 6 of PERA; under that section, public employees are afforded individual due process hearings. That section provides that 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 as to whether he or she violated the act. The request must be filed in writing, within 10 days after regular compensation has stopped, or other discipline has been imposed. If a request is filed, the officer or body having power to remove or discipline the employee must, within 10 days, begin a proceeding that is held in accord with the law and regulations, and then a decision must be rendered within 10 days. If the employee involved is found to have violated the act and his or her employment is terminated or other discipline is imposed, the employee has the right of review to the circuit court within 30 days, to determine whether the decision was supported by competent, material, and substantial evidence on the whole record.]

The bill would allow a public employer to bring an action to enjoin a strike by public employees, and a bargaining unit could bring an action to enjoin a lockout by a public employer. The action would be brought in the circuit court where the employer is located. A court would grant injunctive relief if it found 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 a court order could be punished as contempt. In addition, the court would award court costs and reasonable attorney fees to a plaintiff who prevails in an action. (This provision mirrors the injunction provision in current Section 2a.)

MCL 423.202 and Proposed MCL 423.2b

BACKGROUND INFORMATION:

House Bill 4466 - Union Decertification. Earlier this legislative session, the House Education Committee reported House Bill 4466. That bill would allow school districts to consolidate employee hearings before the Michigan Employment Relations Commission, and also would prohibit a labor organization or 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. House Bill 4466 has been referred to the second reading calendar, and awaits consideration by the full House.

Citizens Research Report. To learn more about the early history of public sector bargaining in Michigan, see this report from the Citizens Research Council, issued in 1988 at the following link:

<http://www.crcmich.org/PUBLICAT/1980s/1988/rpt290.pdf>

Guide on LARA site. For the publication, Guide to Public Sector Labor Relations Law in Michigan, published by Michigan State University and the Michigan Employment Relations Commission, see:

http://www.michigan.gov/documents/dleg/mercguide_217393_7.pdf

FISCAL INFORMATION:

House Bill 5023 would expand the MERC's authority in holding hearings to determine whether a strike or lockout has occurred for *all* public-sector employers/employees. Under current law the MERC holds such hearings only for alleged strikes and lockouts at public schools. In FY 2011, the MERC/BER did not hold a single hearing to determine if a strike or lockout had occurred at a public school.

The likelihood of an alleged strike or lockout occurring by public employers or employees is unknown. Historically, such occurrences have been rare; however, given extraordinary financial circumstances surrounding public employees and employers since the "Great Recession" began and recent changes in state authority pertaining to local oversight and labor negotiations, the past may no longer be an accurate predictor of the future, and the risk of public strikes or lockouts may have increased. Additional public-sector labor disputes, including illegal strikes and lockouts, would increase the administrative costs of the MERC/BER.

In FY 2011, the MERC/BER was supported by an appropriation of \$3,591,800 from Securities fees collected under the Office of Financial and Insurance Regulation; the MERC/BER expended \$3,404,815 of this appropriation on the administration of all of its statutory responsibilities.

ARGUMENTS:

For:

Proponents of the bill note that public employee strikes are illegal and have been illegal for decades. Indeed, strikes in the public sector are expressly prohibited in the Michigan Public Employment Relations Act, in Section 2. Certain procedures and penalties that currently apply only to public school employees were put into statute in 1994 to deter strikes, which had occurred with some regularity. The number of strikes since then has been reduced dramatically, suggesting the legislation worked. This bill puts those same procedures in penalties in statute to apply to other public employees. The aim is to head off potential unlawful work stoppages by public employees. In a sense, the bill levels the playing field between employees in public schools and other kinds of public employees, particularly in local government.

Under the newly applied procedures, the Employment Relations Commission would be required to conduct a hearing within 60 days of receiving notice of a strike, to ascertain if the law had been broken. Second, the commission would also have to issue a finding as to whether the bargaining representative ratified, participated in, assisted, or encouraged the strike, before assessing a fine of \$5,000 a day. Third, this hearing would be separate and distinct from, and would not be subject to the procedures and timelines of, the individual due-process hearings that are conducted under Section 6 of PERA. Together, these measures can stop unions from encouraging unlawful public sector strikes.

The bill also applies this procedure and a parallel set of penalties to public employers, not just public school employers, when they are engaged in lockouts. The law currently only refers to lockouts by public school employers; the bill expands the coverage to other local government employers, and puts procedures and penalties in place similar to those that now apply only to public school employers.

Against:

Critics of the bill have criticized it as unneeded and counterproductive. They say that public employee strikes outside of public schools have been virtually nonexistent for decades. They are illegal and extremely rare. So, the bill can be seen as a solution in search of a problem.

The introduction and passage of this kind of legislation creates, if anything, a more divisive and hostile relationship between employees and employers, and so rather than contribute to labor peace, they risk producing an increase in labor-management strife. Combined with other anti-worker and anti-union legislation during the current legislative session, this bill will work against the kind of cooperative action that is needed to find ways to address local government problems within tight budgets.

Opponents of the bill, and other related legislation, find it bewildering. They see this bill, combined with similar legislation, as an unnecessary attack on the collective bargaining power of unions and on the political power of union workers. They argue that public sector unions are not the problem; they are often the beginning of the solution. They note that Michigan public sector employees have demonstrated during Michigan's decade-long economic downturn that they can partner with public sector managers to solve budget problems. They note that throughout the state, unionized public sector employees,

including teachers, have made wage and benefit concessions, and helped local officials to downsize their organizations, privatize services, and to consolidate operations. They argue that solutions to social problems (in areas such as health, safety, and education) will not be possible if the atmosphere in a community is brutally divisive and bitterly hostile.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (1-17-12)
Associated Builders and Contractors support the bill. (1-17-12)
Michigan Retailers Association supports the bill. (1-17-12)
NFIB supports the bill. (1-17-12)

The International Union, UAW opposes the bill. (1-17-12)
The Michigan Professional Fire Fighters oppose the bill. (1-17-12)
The Michigan AFL-CIO opposes the bill. (1-17-12)
The MEA/NEA Local 1 and the 6-E Coordinating Council oppose the bill. (1-17-12)
The Michigan Laborers District Council opposes the bill. (1-17-12)
UAW Local 6000 opposes the bill. (1-17-12)
AFSCME Council 25 opposes the bill. (1-17-12)
The Michigan Nurses Association opposes the bill. (1-17-12)
The International Brotherhood of Electrical Workers opposes the bill. (1-17-12)
Genesee Intermediate School District opposes the bill. (1-17-12)
IUOE # 324 opposes the bill. (1-17-12)
Teamsters Local 406 opposes the bill. (1-17-12)
The Michigan State Employees Association opposes the bill. (1-17-12)
Michigan State Retirees oppose the bill. (1-24-12)
AFSCME opposes the bill. (1-24-12)
The Michigan Building and Construction Trades oppose the bill. (1-24-12)
The Michigan Education Association opposes the bill. (1-24-12)
The Michigan Municipal League opposes the bill. (1-24-12)
Concerned Citizens of Michigan oppose the bill. (1-24-12)
IW # 25 opposes the bill. (1-24-12)
UAW Retirees oppose the bill. (1-31-12)
Progressive Democrats of Monroe oppose the bill. (1-31-12)
SEIU Local 517 opposes the bill. (1-31-12)
IBEW Local 58 opposes the bill. (1-31-12)

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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.