

MASS PICKETING PENALTIES

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House Bill 4643 (reported from committee without amendment)

Sponsor: Rep. Tom McMillin

Committee: Oversight

First Analysis (10-2-13)

BRIEF SUMMARY: The bill would set penalties for mass picketing and related actions. Individual violators would be fined \$1,000 for each day of a violation, and unions that continued to sponsor or assist in prohibited activity in violation of an injunction would be fined \$10,000 for each day of the violation. Additionally, the bill would provide an employer with the right to receive an injunction without demonstrating irreparable harm; direct courts to award court costs to prevailing plaintiffs; and enable courts to punish non-compliance as contempt. The bill would amend the act creating the Michigan Employment Relations Commission and applies to private sector and public sector labor disputes.

FISCAL IMPACT: House Bill 4643 would have an indeterminate fiscal impact on local courts, and would not have a significant fiscal impact on the Bureau of Employment Relations within the Department of Licensing and Regulatory Affairs. See *Fiscal Information*.

THE APPARENT PROBLEM:

Picketing is a form of protest, generally nonviolent, in which people (called picketers) gather outside a place of work or other location, in an attempt to dissuade others from going inside (called crossing the picket line). This form of protest is used by organized groups who are, or feel themselves to be, marginalized in decision-making that directly affects them, including, although not limited to, members of labor organizations. For example, people in U. S. civil rights movements, including African Americans, Hispanics, and women used picketing, in an attempt to change the behavior of groups that denied their membership or participation. Generally, however, picketing is associated with workers in trades and professions who wish to call the public's attention to their economic grievances against their employers.

There are several types of picketing: informational picketing, to inform the public about a matter of concern to the picketers; mass picketing, which aims to bring as many people as possible to a particular location in order to demonstrate support for a cause, sometimes resulting in a blockade; and secondary picketing, when people not directly connected to the issue but supportive join the protest. More recently in the socially connected electronic age, there are flying pickets, which mobilize groups at different locations; for example, at serial or simultaneous sites when a business has many locations, such as a headquarters in a distant city, but manufacturing plants scattered across different regions of the county. And finally, historically there has been disruptive picketing, where pickets

use force, or the threat of force or physical obstruction to injure or intimidate or otherwise interfere with staff, service users, or customers.

Since 1939, mass picketing has been illegal in Michigan when it does any of the following: hinders or prevents, by unlawful threats or force, the pursuit of any lawful work or employment; obstructs or interferes with entrance to or egress from any place of employment; obstructs or interferes with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance; or engages in picketing a private residence by any means or methods whatever. The prohibition applies provided that the assembly is not protected by constitutional provisions. The violation of this law is punished as a misdemeanor.

Despite the fact that mass picketing is illegal, the Central Michigan University Board of Trustees, as recently as August 22, 2011, sought and won an *ex parte* temporary restraining order from an Isabella County Circuit Court judge to enjoin the Central Michigan University Faculty Association MEA/NEA bargaining unit employees from, among other things, engaging in a strike and preventing individuals from engaging in lawful work by mass picketing or threats.

Legislation has been introduced to provide an employer with the right to seek injunctive relief in circuit court and to receive an injunction without demonstrating irreparable harm or other factors; to award court costs to prevailing plaintiffs; and to punish non-compliance as contempt. The legislation also increases the penalty for violating the law from a misdemeanor to a daily civil fine of \$1,000 for each individual, and a daily fine of \$10,000 for the union or organization that sponsors or assists in the prohibited activity.

THE CONTENT OF THE BILL:

House Bill 4643 would amend Public Act 176 of 1939, which created the Employment Relations Commission, to modify the penalties for mass picketing.

Currently under the law, a person cannot hinder or prevent the pursuit of any lawful work or employment by mass picketing, unlawful threats, or force; obstruct or interfere with entrance to or egress from any place of employment; obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways airports, or other ways of travel or conveyance; or engage in picketing a private residence by any means or methods whatever. (These prohibitions do not apply to picketing authorized under the state or federal constitution.)

Injunctive Relief

House Bill 4643 would retain the provisions described above. In addition, the bill specifies that an employer or other person that was subject to any of the activities noted above could bring an action to enjoin the prohibited activity in the circuit court where they are located. The court having jurisdiction would be required to grant injunctive relief if it found that any person had engaged in (or was engaging in) any of the prohibited conduct, without regard to other remedies, demonstration of irreparable harm, or other factors.

The bill would require the court to award court costs and reasonable attorney fees to a plaintiff who prevailed in an action.

The bill specifies that an employer that was the subject of picketing could obtain injunctive relief against picketers without a showing of irreparable harm, if the court found the picketing to be in violation of the prohibitions noted above.

Contempt

Under the bill, failure to comply with an order of the court could be punished as contempt.

Penalties

Any person who violated the prohibitions, and who had previously been enjoined for a violation, would be subject to a civil fine of \$1,000 for each day of the violation. A union or organization that continued to sponsor or assist in the prohibited activity in violation of an injunction would be subject to a civil fine of \$10,000 for each day of the violation. The bill specifies that the civil fine assessed would be paid to the court, and upon a showing of damages to business sales, business opportunities, or property, the employer, union, organization, or other entity that was the subject of the prohibited activity would be compensated from the payment made to the court.

MCL 423.9f

BACKGROUND INFORMATION:

During the 2011-2012 legislative session, an identical bill--known as House Bill 5024--was introduced in the House of Representatives and reported from the Oversight, Reform, and Ethics Committee on January 1, 2012. The bill died on the second reading calendar at the end of the two-year session.

FISCAL INFORMATION:

This bill would have an indeterminate fiscal impact on local courts. Courts may face costs due to an increased caseload from new actions created by this bill. The exact cost to local courts would depend on the number of new filings that would occur under this proposal.

For those who have previously violated these prohibitions, an additional fine is assessed. A fine of \$1,000 per day would be assessed to "a person" who had been previously enjoined. A fine of \$10,000 per day would be assessed to "a union or organization" that continued to sponsor or assist in the prohibited activity in violation of an injunction. The fines are paid to local courts, which could partially or fully offset the costs related to the court's increased caseload. As employers that are subjected to picketing will receive compensation out of this fine, the exact amount a court will receive per violation is indeterminate.

ARGUMENTS:

For:

Proponents of the bill say the bill is needed to protect Michigan's still-struggling economy by better protecting job providers from illegal mass picketing. As one proponent notes: "With our economy just beginning to rebound, we must ensure the Michigan job providers are able to deliver their goods and services and keep our economy moving forward. The legislation will help provide a stable economy, while giving job providers some recourse to stop this type of disruptive act."

During the 2011-2012 legislative session, proponents of the legislation said that this bill was one of four that constituted a "labor reform" package. The four bills in the package increased penalties for participating in illegal public worker strikes, made it easier for employers to find replacements for striking workers, and made it easier to get court orders against mass picketing. When taken together, proponents argued the legislation represented a proactive effort whose aim was to head off potential labor problems.

One proponent, the National Federation of Independent Business (NFIB), referring to House Bills 4642 and 4643 this year, as well as to the four-bill package introduced during the 2011-2012 legislative session, said: "These bills are necessary...because it is difficult, expensive, and time-consuming to penalize illegally striking employees as the current law is now constructed. Government employee unions have made it clear that they are not afraid to break the law and strike to oppose efforts by the legislature and governor to enact reforms and trim budgets. Last year, for example, the Michigan Education Association threatened a statewide strike in reaction to budget cuts and emergency financial manager legislation signed into state law. Some school districts have also had brief strikes." He continued: "Why does organized labor feel they should not be subject to penalties when they break the law by supporting and encouraging an illegal strike activity?" He noted that small businesses suffer penalties when they break the law, and workers should too.

Against:

Opponents of the bill say they are not aware of any problems with mass picketing that have not been adequately addressed under current law. The penalties in the bill are excessive and appear intended to intimidate workers in order to prevent them from giving voice to their grievances. During the debate during the previous legislative session, one union spokesperson has said the effect would be to make strikes impossible and to reduce "unions to fraternal organizations or advisory clubs whose suggestions will be ignored at will by employers." The fines, he said, "will destroy any union's ability to exist within a month."

Opponents of the bill have said they find this proposed legislation bewildering, and ask "What is the problem this bill seeks to address?" They argue that gathering to protest and picket is a right of American citizens that is protected under the national and state constitutions. Further, they argue no grievances have been filed citing unruly or illegal picketing by any employers in the State of Michigan. Consequently, some opponents see this bill as an unnecessary attack on the collective bargaining power of unions and on the

political power of union workers, many of whom have made wage and benefit concessions, to help employers downsize their organizations, privatize services, and consolidate operations. The facts demonstrate that unions in the private and public sectors have cooperated to help companies and agencies adjust to new economic realities.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (9-24-13)

The National Federation of Independent Business supports the bill. (9-24-13)

The United Auto Workers opposes the bill. (9-24-13)

The Teamsters oppose the bill. (9-24-13)

The IBEW Michigan State Conference opposes the bill. (9-24-13)

The Department of Licensing and Regulatory Affairs is neutral on the bill. (9-24-13)

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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.