

PUBLIC EMPLOYMENT RELATIONS (EXCERPT)
Act 336 of 1947

423.202a Allegation of strike by public school employees or lockout by public school employer; notice to commission; hearing; notification of name and home address of each public school employee participating in strike; serving or mailing notice; presumption; challenge; filing of affidavit and supporting proof by employee; hearing to determine if employee engaged in strike; determination; order; deduction from annual salary; determination that public school employer instituted lockout; fines; deduction and disposition of fines; collection proceedings; fines additional to other penalties; injunction; duties of court; reimbursement prohibited; "public school employee" defined.

Sec. 2a.

(1) Upon belief that conditions constituting a strike by 1 or more public employees in violation of section 2 exist, the public school employer or the superintendent of public instruction, after consultation with the public school employer, shall notify the commission of the full or partial days that the alleged strike has occurred and the name and address of the bargaining representative. The notice shall be accompanied by a sworn affidavit, supported by any available documentary proof, containing a clear and concise statement of the facts upon which the public school employer or the superintendent of public instruction relies to establish a violation of section 2. The public school employer or the superintendent of public instruction shall concurrently serve the bargaining representative with a copy of the notice. If the public school employer or the superintendent of public instruction has not notified the commission of an allegation of a strike under this subsection, a parent or legal guardian of a child who is enrolled in the school district may notify the commission of the full or partial days that 1 or more public school employees were engaged in an 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 15 days after receipt of a notice under subsection (1) or (2), the commission shall conduct a hearing to determine if conditions constituting a strike by 1 or more public school employees in violation of section 2 or a lockout exist. The person giving notice under subsection (1) or (2) bears the burden of proof at the hearing on the allegations. The commission shall issue its decision within 3 business days after the close of the hearing. 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 the commission determines that conditions constituting a strike in violation of section 2 exist, the superintendent of public instruction or the public school employer shall, within 5 business days after notification of the decision, notify the commission of the name and home address of each public school employee alleged to have participated in the strike. The superintendent of public instruction or the public school employer shall, within the same period, serve with or mail to each named public school employee a copy of the notice.

(5) A public school employee named in the notice under subsection (4) and alleged to have been either absent from work without permission of the public school employer or to have abstained wholly or in part from the full performance of his or her normal duties without permission on a date when a strike occurred is presumed to have engaged in the strike on that date.

(6) A public school employee presumed to have engaged in a strike in violation of section 2 may challenge that presumption within 10 days after the date the notice was served or mailed to the employee under subsection (4), by filing with the commission and causing to be served on the superintendent of public instruction or the public school employer, a sworn affidavit, supported by available documentary proof, containing a clear and concise statement of the facts upon which he or she relies to show that the determination was incorrect.

(7) The public school employer shall deduct from the annual salary of a public school employee named in a notice under subsection (4) who fails to file an affidavit and supporting proof under subsection (6) 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. 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 deduction. 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 this subsection. A deduction under this subsection is not a demotion for purposes of 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191.

(8) If a public school employee named in a notice under subsection (4) files a timely affidavit and supporting proof, a commissioner, the commission, or an agent of the commission shall, within 15 days after receipt of the affidavit and supporting proof, commence a hearing to determine whether the public school employee engaged in a strike in violation of section 2. The public school employee bears the burden of proof at the hearing. A hearing

conducted under this subsection is separate and distinct from, and is not subject to the procedures and timelines of, a proceeding under section 6.

(9) After a hearing under subsection (8), if a commissioner, the commission, or an agent of the commission determines by the preponderance of the evidence that the public school employee engaged in a strike in violation of section 2, the individual or commission shall state its findings of fact and shall issue and cause to be served on the public school employee an order requiring the employee to cease and desist from the unlawful conduct and the public school employer to deduct from the annual salary, as described in subsection (7), of the 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. If the evidence is presented before a commissioner or agent of the commission, the commissioner or agent shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the commission. If a party does not file an exception within 20 days after service of the proposed decision, the recommended order becomes the order of the commission and is effective as stated in the order.

(10) 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. The fine shall be paid to the commission and transmitted as provided in subsection (11).

(11) If a public school employer does not deduct money from a public school employee's pay pursuant to an order under this section or if the commission does not receive payment of a fine it imposed under this section within 30 days, the superintendent of public instruction shall institute collection proceedings and the money received shall be transmitted 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.

(12) Deductions imposed under this section are in addition to any loss of pay attributable to the full or partial day that the public school employee was absent from work as a result of the strike under section 2 and any other penalty prescribed by this act and by other law.

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

(14) A public school employer, the superintendent of public instruction, or the attorney general 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. If the commission has made a determination after a hearing under subsection (3) that a strike or lockout exists, that finding shall not be overturned except by clear and convincing evidence. If the court having jurisdiction of an action brought under this subsection finds that conditions constituting a strike or lockout in violation of section 2 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 under subsection (9) or (10), the court shall do all of the following:

(a) For a strike in violation of section 2, order each public school employee to pay a fine in an amount equal to 1 day of pay for that public school employee for each full or partial day the public school employee engaged in the strike. For a lockout in violation of section 2, order the public school employer to pay a fine of \$5,000.00 for each full or partial day of the lockout and order each member of the public school employer's governing board to pay a fine of \$250.00 for each full or partial day of the lockout. A fine imposed under this subsection shall be transmitted to the state treasurer for deposit into the state school aid fund established under section 11 of article IX of the state constitution of 1963.

(b) Order the public school employees or public school employer acting in violation of section 2 to end the strike or lockout.

(c) Award costs and attorney fees to a plaintiff who prevails in an action under this subsection.

(d) Grant additional equitable relief that the court finds appropriate.

(15) An order issued under subsection (14) is enforceable through the court's contempt power.

(16) 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.

(17) 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 ;-- Am. 2016, Act 194, Eff. Sept. 19, 2016

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, Â§ 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, Â§ 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