



HOUSE BILL No. 4993

June 16, 1995, Introduced by Reps. DeLange, Dalman and Voorhees and referred to the Committee on Human Resources and Labor.

A bill to amend sections 1, 2, 2a, 6, 7a, 15, 16, and 17 of Act No. 336 of the Public Acts of 1947, entitled as amended

"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; and to prescribe means of enforcement and penalties for the violation of the provisions of this act,"

sections 1, 2, 6, and 15 as amended and sections 2a, 7a, and 17 as added by Act No. 112 of the Public Acts of 1994, being sections 423.201, 423.202, 423.202a, 423.206, 423.207a, 423.215, 423.216, and 423.217 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 2, 2a, 6, 7a, 15, 16, and 17 of Act
2 No. 336 of the Public Acts of 1947, sections 1, 2, 6, and 15 as
3 amended and sections 2a, 7a, and 17 as added by Act No. 112 of
4 the Public Acts of 1994, being sections 423.201, 423.202,

1 423.202a, 423.206, 423.207a, 423.215, 423.216, and 423.217 of the
2 Michigan Compiled Laws, are amended to read as follows:

3 Sec. 1. (1) As used in this act:

4 (a) "Bargaining representative" means a labor organization
5 recognized by an employer or certified by the commission as the
6 sole and exclusive bargaining representative of certain employees
7 of the employer.

8 (b) "Commission" means the employment relations commission
9 created in section 3 of Act No. 176 of the Public Acts of 1939,
10 being section 423.3 of the Michigan Compiled Laws.

11 (c) "HIGHER EDUCATION EMPLOYER" MEANS A PUBLIC EMPLOYER THAT
12 IS THE BOARD OF AN INSTITUTION OF HIGHER EDUCATION.

13 (d) "INSTITUTION OF HIGHER EDUCATION" MEANS A STATE INSTITU-
14 TION OF HIGHER EDUCATION DESCRIBED IN SECTION 4, 5, OR 6 OF ARTI-
15 CLE VIII OF THE STATE CONSTITUTION OF 1963 OR A COMMUNITY COLLEGE
16 ESTABLISHED UNDER THE COMMUNITY COLLEGE ACT OF 1966, ACT NO. 331
17 OF THE PUBLIC ACTS OF 1966, BEING SECTIONS 389.1 TO 389.195 OF
18 THE MICHIGAN COMPILED LAWS, OR UNDER PART 25 OF THE SCHOOL CODE
19 OF 1976, ACT NO. 451 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS
20 380.1601 TO 380.1607 OF THE MICHIGAN COMPILED LAWS.

21 (E) ~~(c)~~ "Intermediate school district" means that term as
22 defined in section 4 of ~~the school code of 1976,~~ Act No. 451 of
23 the Public Acts of 1976, being section 380.4 of the Michigan
24 Compiled Laws.

25 (F) ~~(d)~~ "Lockout" means the temporary withholding of work
26 from a group of employees by means of shutting down the operation
27 of the employer in order to bring pressure upon the affected

1 employees or the bargaining representative, or both, to accept
2 the employer's terms of settlement of a labor dispute.

3 (G) ~~(e)~~ "Public employee" means a person holding a posi-
4 tion by appointment or employment in the government of this
5 state, in the government of 1 or more of the political subdivi-
6 sions of this state, in the public school service, in a public or
7 special district, in the service of an authority, commission, or
8 board, or in any other branch of the public service. PUBLIC
9 EMPLOYEE DOES NOT INCLUDE A PERSON EMPLOYED AS A SUPERVISOR.

10 (H) "PUBLIC SCHOOL" MEANS A SCHOOL DISTRICT, PUBLIC SCHOOL
11 ACADEMY, OR INTERMEDIATE SCHOOL DISTRICT OR A SCHOOL OR PROGRAM
12 OPERATED BY A PUBLIC SCHOOL EMPLOYER.

13 (I) ~~(f)~~ "Public school academy" means a public school
14 academy organized under part 6a OR 6B of Act No. 451 of the
15 Public Acts of 1976, being sections 380.501 to 380.507 AND
16 380.511 TO 380.518 of the Michigan Compiled Laws.

17 (J) ~~(g)~~ "Public school employer" means a public employer
18 that is the board of a school district, intermediate school dis-
19 trict, or public school academy, or is the governing board of a
20 joint endeavor or consortium consisting of any combination of
21 school districts, intermediate school districts, or public school
22 academies.

23 (K) ~~(h)~~ "School district" means that term as defined in
24 section 6 of Act No. 451 of the Public Acts of 1976, being
25 section 380.6 of the Michigan Compiled Laws, or a local act
26 school district as defined in section 5 of Act No. 451 of the

1 Public Acts of 1976, being section 380.5 of the Michigan Compiled
2 Laws.

3 (1) ~~(i)~~ "Strike" means the concerted failure to report for
4 duty, the willful absence from one's position, the stoppage of
5 work, or the abstinence in whole or in part from the full, faith-
6 ful, and proper performance of the duties of employment for the
7 purpose of inducing, influencing, or coercing a change in employ-
8 ment conditions, compensation, or the rights, privileges, or
9 obligations of employment. For employees of a public school
10 employer OR HIGHER EDUCATION EMPLOYER, strike also includes an
11 action described in this subdivision that is taken for the pur-
12 pose of protesting or responding to an act alleged or determined
13 to be an unfair labor practice committed by the public school
14 employer OR HIGHER EDUCATION EMPLOYER.

15 (M) "SUPERVISOR" MEANS A PERSON WHO, IN THE INTEREST OF THE
16 PERSON'S EMPLOYER, HAS AUTHORITY TO DO ANY OF THE FOLLOWING AND
17 WHOSE EXERCISE OF THAT AUTHORITY IS NOT OF A MERELY ROUTINE OR
18 CLERICAL NATURE BUT REQUIRES THE USE OF INDEPENDENT JUDGMENT:

19 (i) TO HIRE, TRANSFER, SUSPEND, LAY OFF, RECALL, PROMOTE,
20 DISCHARGE, ASSIGN, REWARD, OR DISCIPLINE OTHER EMPLOYEES.

21 (ii) TO RESPONSIBLY DIRECT OTHER EMPLOYEES.

22 (iii) TO ADJUST GRIEVANCES OF OTHER EMPLOYEES.

23 (iv) TO EFFECTIVELY RECOMMEND ACTIONS DESCRIBED IN SUBPARA-
24 GRAPHS (i) TO (iii).

25 (2) This act does not limit, impair, or affect the right of
26 a public employee to the expression or communication of a view,
27 grievance, complaint, or opinion on any matter related to the

1 conditions or compensation of public employment or their
2 betterment as long as the expression or communication does not
3 interfere with the full, faithful, and proper performance of the
4 duties of employment.

5 Sec. 2. A public employee shall not strike. ~~and a~~ A
6 public school employer OR HIGHER EDUCATION EMPLOYER shall not
7 institute a lockout. A public school employer OR HIGHER EDUCA-
8 TION EMPLOYER does not violate this section if there is a total
9 or partial cessation of the ~~public school~~ employer's operations
10 in response to a strike held in violation of this section.

11 Sec. 2a. (1) If a public school employer OR HIGHER EDUCA-
12 TION EMPLOYER alleges that there is a strike by 1 or more ~~public~~
13 ~~school~~ OF ITS PUBLIC employees in violation of section 2, the
14 public school employer OR HIGHER EDUCATION EMPLOYER shall notify
15 the commission of the full or partial days a public ~~school~~
16 employee was engaged in the alleged strike.

17 (2) If a bargaining representative alleges that there is a
18 lockout by a public school employer OR HIGHER EDUCATION EMPLOYER
19 in violation of section 2, the bargaining representative shall
20 notify the commission of the full or partial days of the alleged
21 lockout.

22 (3) Within 60 days after receipt of a notice made pursuant
23 to subsection (1) or (2), the commission shall conduct a hearing
24 to determine if there has been a violation and shall issue its
25 decision and order. A hearing conducted under this subsection is
26 separate and distinct from, and is not subject to the procedures
27 and timelines of, a proceeding conducted under section 6.

1 (4) If, after a hearing under subsection (3), a majority of
2 the commission finds that 1 or more public ~~school~~ employees OF
3 A PUBLIC SCHOOL EMPLOYER OR HIGHER EDUCATION EMPLOYER engaged in
4 a strike in violation of section 2, the commission shall fine
5 each OF THOSE public ~~school employee~~ EMPLOYEES an amount equal
6 to 1 day of pay for that public ~~school~~ employee for each full
7 or partial day that he or she engaged in the strike. ~~and shall~~
8 ~~fine the bargaining representative of the public school employee~~
9 ~~or employees \$5,000.00 for each full or partial day the public~~
10 ~~school employee or employees engaged in the strike.~~

11 (5) If, after a hearing under subsection (3), a majority of
12 the commission finds that a public school employer OR HIGHER EDU-
13 CATION EMPLOYER instituted a lockout in violation of section 2,
14 the commission shall fine the public school employer OR HIGHER
15 EDUCATION EMPLOYER \$5,000.00 for each full or partial day of the
16 lockout and shall fine each member of the public school
17 employer's OR HIGHER EDUCATION EMPLOYER'S governing board \$250.00
18 for each full or partial day of the lockout.

19 (6) If the commission imposes a fine against a public
20 ~~school~~ employee under subsection (4) and the public ~~school~~
21 employee continues to be employed by a public school employer OR
22 HIGHER EDUCATION EMPLOYER, the commission shall order the public
23 school employer OR HIGHER EDUCATION EMPLOYER to deduct the fine
24 from the public ~~school~~ employee's annual salary. The public
25 ~~school~~ employee's annual salary is the annual salary that is
26 established in the applicable contract in effect at the time of
27 the strike or, if no applicable contract is in effect at the time

1 of the strike, in the applicable contract in effect at the time
2 of the decision and order. However, if no applicable contract is
3 in effect at either of those times, the public ~~school~~
4 employee's annual salary shall be considered to be the annual
5 salary that applied or would have applied to the public ~~school~~
6 employee in the most recent applicable contract in effect before
7 the strike. A public school employer OR HIGHER EDUCATION
8 EMPLOYER shall comply promptly with an order under this
9 subsection. A deduction under this subsection is not a demotion
10 for the purposes of Act No. 4 of the Extra Session of 1937, being
11 sections 38.71 to 38.191 of the Michigan Compiled Laws.

12 (7) The commission shall transmit money received from fines
13 imposed under this section, and a public school employer OR
14 HIGHER EDUCATION EMPLOYER shall transmit money deducted pursuant
15 to an order under subsection (6), to the state treasurer for
16 deposit in the state school aid fund established under section 11
17 of article IX of the state constitution of 1963.

18 (8) If the commission does not receive payment of a fine
19 imposed under this section within 30 days after the imposition of
20 the fine, or if a public school employer OR HIGHER EDUCATION
21 EMPLOYER does not deduct a fine from a public ~~school~~ employee's
22 pay pursuant to an order under subsection (6), the commission
23 shall institute collection proceedings.

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

26 (10) A public school employer OR HIGHER EDUCATION EMPLOYER
27 may bring an action to enjoin a strike by public ~~school~~

1 employees EMPLOYED BY THE PUBLIC SCHOOL EMPLOYER OR HIGHER
2 EDUCATION EMPLOYER in violation of section 2, and a bargaining
3 representative may bring an action to enjoin a lockout by a
4 public school employer OR HIGHER EDUCATION EMPLOYER in violation
5 of section 2, in the circuit court for the county in which the
6 affected public school OR INSTITUTION OF HIGHER EDUCATION is
7 located. ~~A court having jurisdiction of an action brought under~~
8 ~~this subsection shall grant injunctive relief if the court finds~~
9 ~~that a strike or lockout has occurred, without regard to the~~
10 ~~existence of other remedies, demonstration of irreparable harm,~~
11 ~~or other factors.~~ Failure to comply with an order of the court
12 may be punished as contempt. In addition, the court shall award
13 court costs and reasonable attorney fees to a plaintiff who pre-
14 vails in an action brought under this subsection.

15 (1) A public school employer OR HIGHER EDUCATION EMPLOYER
16 shall not provide to a public ~~school~~ employee or to a board
17 member any compensation or additional work assignment that is
18 intended to reimburse the public ~~school~~ employee or board
19 member for a monetary penalty imposed under this section or that
20 is intended to allow the public ~~school~~ employee or board member
21 to recover a monetary penalty imposed under this section.

22 ~~(12) As used in this section, "public school employee"~~
23 ~~means a person employed by a public school employer.~~

24 Sec. 6. (1) Notwithstanding the provisions of any other
25 law, a public employee who, by concerted action with others and
26 without the lawful approval of his or her superior, willfully
27 absents himself or herself from his or her position, or abstains

1 in whole or in part from the full, faithful and proper
2 performance of his or her duties for the purpose of inducing,
3 influencing or coercing a change in employment conditions, com-
4 pensation, or the rights, privileges, or obligations of employ-
5 ment, or a public employee employed by a public school employer
6 OR HIGHER EDUCATION EMPLOYER who engages in an action described
7 in this subsection for the purpose of protesting or responding to
8 an act alleged or determined to be an unfair labor practice com-
9 mitted by the public school employer OR HIGHER EDUCATION
10 EMPLOYER, shall be considered to be on strike.

11 (2) Before a public employer may discipline or discharge a
12 public employee for engaging in a strike, the public employee,
13 upon request, is entitled to a determination under this section
14 as to whether he or she violated this act. The request shall be
15 filed in writing, with the officer or body having power to remove
16 or discipline the employee, within 10 days after regular compen-
17 sation of the employee has ceased or other discipline has been
18 imposed. If a request is filed, the officer or body, within 10
19 days after receipt of the request, shall commence a proceeding
20 for the determination of whether the public employee has violated
21 this act. The proceedings shall be held in accordance with the
22 law and regulations appropriate to a proceeding to remove the
23 public employee and shall be held without unnecessary delay. The
24 decision of the officer or body shall be made within 10 days
25 after the conclusion of the proceeding. If the employee involved
26 is found to have violated this act and his or her employment is
27 terminated or other discipline is imposed, the employee has the

1 right of review to the circuit court having jurisdiction of the
2 parties, within 30 days from the date of the decision, for a
3 determination as to whether the decision is supported by compe-
4 tent, material, and substantial evidence on the whole record.
5 This subsection does not apply to a penalty imposed under
6 section 2a.

7 Sec. 7a. (1) In addition to mediation conducted under sec-
8 tion 7, if a public school employer OR HIGHER EDUCATION EMPLOYER
9 and a bargaining representative of a bargaining unit of its
10 employees mutually agree that an impasse has been reached in col-
11 lective bargaining between them, the parties may agree to partic-
12 ipate in additional mediation under this section.

13 (2) If parties described in subsection (1) agree to partici-
14 pate in mediation under this section, then not later than 30 days
15 after the date of impasse, each of the parties shall appoint 1
16 individual to represent the party in the mediation, and those 2
17 representatives shall select through a mutually agreed process a
18 neutral third party to act as the mediator. The mediator and the
19 2 representatives shall meet to attempt to agree to a recommended
20 settlement of the impasse.

21 (3) Not later than 30 days after appointment of a mediator
22 under subsection (2), if the representatives of the parties mutu-
23 ally agree on a recommended settlement of the impasse, the repre-
24 sentatives each shall present the recommended settlement to the
25 party he or she represents for approval.

26 (4) If 1 or both of the parties fail to ratify a recommended
27 settlement described in subsection (3) within the 30-day time

1 limit specified in subsection (3), the public school employer OR
2 HIGHER EDUCATION EMPLOYER may implement unilaterally its last
3 offer of settlement made before the impasse occurred. This sec-
4 tion does not limit or otherwise affect a public school
5 employer's OR HIGHER EDUCATION EMPLOYER'S ability to unilaterally
6 implement all or part of its bargaining position as otherwise
7 provided by law.

8 (5) Both parties shall share equally any expenses of media-
9 tion conducted under this section.

10 Sec. 15. (1) A public employer shall bargain collectively
11 with the representatives of its employees as defined in section
12 11 and is authorized to make and enter into collective bargaining
13 agreements with such representatives. Except as otherwise pro-
14 vided in this section, for the purposes of this section, to bar-
15 gain collectively is the performance of the mutual obligation of
16 the employer and the representative of the employees to meet at
17 reasonable times and confer in good faith with respect to wages,
18 hours, and other terms and conditions of employment, or the nego-
19 tiation of an agreement, or any question arising under the agree-
20 ment, and the execution of a written contract, ordinance, or res-
21 olution incorporating any agreement reached if requested by
22 either party. ~~—but~~ HOWEVER, this obligation TO BARGAIN
23 COLLECTIVELY does not compel either party to agree to a proposal
24 or require the making of a concession AND DOES NOT PREVENT THE
25 PUBLIC EMPLOYER FROM IMPLEMENTING ITS LAST BEST OFFER AFTER AN
26 IMPASSE HAS BEEN REACHED WHETHER OR NOT IMPASSE RESOLUTION
27 PROCEDURES HAVE BEEN EXHAUSTED.

1 (2) A public school employer has the responsibility,
2 authority, and right to manage and direct on behalf of the public
3 the operations and activities of the public schools under its
4 control. A HIGHER EDUCATION EMPLOYER HAS THE RESPONSIBILITY,
5 AUTHORITY, AND RIGHT TO MANAGE AND DIRECT ON BEHALF OF THE PUBLIC
6 THE OPERATIONS AND ACTIVITIES OF THE INSTITUTION OF HIGHER EDUCA-
7 TION UNDER ITS CONTROL.

8 (3) Collective bargaining between a public school employer
9 and a bargaining representative of its employees shall not
10 include any of the following subjects:

11 (a) Who is or will be the policyholder of an employee group
12 insurance benefit. This subdivision does not affect the duty to
13 bargain with respect to types and levels of benefits and cover-
14 ages for employee group insurance. A change or proposed change
15 in a type or to a level of benefit, policy specification, or cov-
16 erage for employee group insurance shall be bargained by the
17 public school employer and the bargaining representative before
18 the change may take effect.

19 (b) Establishment of the starting day for the school year
20 and of the amount of pupil contact time required to receive full
21 state school aid under section 1284 of the school code of 1976,
22 Act No. 451 of the Public Acts of 1976, being section 380.1284 of
23 the Michigan Compiled Laws, and under section 101 of the state
24 school aid act of 1979, Act No. 94 of the Public Acts of 1979,
25 being section 388.1701 of the Michigan Compiled Laws.

26 (c) Composition of site-based decision-making bodies
27 established pursuant to section 1202a of Act No. 451 of the

1 Public Acts of 1976, being section 380.1202a of the Michigan
2 Compiled Laws, or of school improvement committees established
3 under section 1277 of Act No. 451 of the Public Acts of 1976,
4 being section 380.1277 of the Michigan Compiled Laws.

5 (d) The decision of whether or not to provide or allow
6 interdistrict or intradistrict open enrollment opportunity in a
7 school district or of which grade levels or schools in which to
8 allow such an open enrollment opportunity.

9 (e) The decision of whether or not to act as an authorizing
10 body to grant a contract to organize and operate 1 or more public
11 school academies under part 6a OR 6B of Act No. 451 of the Public
12 Acts of 1976, being sections 380.501 to 380.507 AND 380.511 TO
13 380.518 of the Michigan Compiled Laws, or the granting of a leave
14 of absence to an employee of a school district to participate in
15 a public school academy.

16 (f) The decision of whether or not to contract with a third
17 party for 1 or more noninstructional support services; or the
18 procedures for obtaining the contract; or the identity of the
19 third party; or the impact of the contract on individual employ-
20 ees or the bargaining unit.

21 (g) The use of volunteers in providing services at its
22 schools.

23 (h) Decisions concerning use of experimental or pilot pro-
24 grams and staffing of experimental or pilot programs and deci-
25 sions concerning use of technology to deliver educational pro-
26 grams and services and staffing to provide the technology, or the

1 impact of these decisions on individual employees or the
2 bargaining unit.

3 (i) Any compensation or additional work assignment intended
4 to reimburse an employee for or allow an employee to recover any
5 monetary penalty imposed under this act.

6 (4) COLLECTIVE BARGAINING BETWEEN A HIGHER EDUCATION
7 EMPLOYER AND A BARGAINING REPRESENTATIVE OF ITS EMPLOYEES SHALL
8 NOT INCLUDE ANY OF THE FOLLOWING SUBJECTS:

9 (A) WHO IS OR WILL BE THE POLICYHOLDER OF AN EMPLOYEE GROUP
10 INSURANCE BENEFIT. THIS SUBDIVISION DOES NOT AFFECT THE DUTY TO
11 BARGAIN WITH RESPECT TO TYPES AND LEVELS OF BENEFITS AND COVER-
12 AGES FOR EMPLOYEE GROUP INSURANCE. A CHANGE OR PROPOSED CHANGE
13 IN A TYPE OR TO A LEVEL OF BENEFIT, POLICY SPECIFICATION, OR COV-
14 ERAGE FOR EMPLOYEE GROUP INSURANCE SHALL BE BARGAINED BY THE
15 HIGHER EDUCATION EMPLOYER AND THE BARGAINING REPRESENTATIVE
16 BEFORE THE CHANGE MAY TAKE EFFECT.

17 (B) ESTABLISHMENT OR MODIFICATION OF THE INSTRUCTIONAL CAL-
18 ENDAR OR SCHEDULE, INCLUDING, BUT NOT LIMITED TO, THE NUMBER OF
19 INSTRUCTIONAL DAYS, THE CHOICE OF BEGINNING AND ENDING DAYS, AND
20 THE TYPE OR FORM OF SCHEDULE OR CALENDAR FOR THE INSTITUTION OF
21 HIGHER EDUCATION.

22 (C) ESTABLISHMENT OF MINIMUM WORKLOAD REQUIREMENTS AND THE
23 METHOD OF MEASURING WORK LOAD.

24 (D) DECISIONS CONCERNING THE ESTABLISHMENT, LOCATION, TYPE,
25 STAFFING, REORGANIZATION, REDUCTION, OR ELIMINATION OF THE EDUCA-
26 TIONAL PROGRAMS OF THE INSTITUTION OF HIGHER EDUCATION.

1 (E) THE DECISION OF WHETHER OR NOT TO ACT AS AN AUTHORIZING
2 BODY TO GRANT A CONTRACT TO ORGANIZE AND OPERATE 1 OR MORE PUBLIC
3 SCHOOL ACADEMIES UNDER PART 6A OR 6B OF ACT NO. 451 OF THE PUBLIC
4 ACTS OF 1976, OR THE GRANTING OF A LEAVE OF ABSENCE TO AN
5 EMPLOYEE OF THE INSTITUTION OF HIGHER EDUCATION TO PARTICIPATE IN
6 A PUBLIC SCHOOL ACADEMY.

7 (F) THE DECISION OF WHETHER OR NOT TO CONTRACT WITH A THIRD
8 PARTY FOR 1 OR MORE NONINSTRUCTIONAL SUPPORT SERVICES; OR THE
9 PROCEDURES FOR OBTAINING THE CONTRACT; OR THE IDENTITY OF THE
10 THIRD PARTY; OR THE IMPACT OF THE CONTRACT ON INDIVIDUAL EMPLOY-
11 EES OR THE BARGAINING UNIT.

12 (G) THE USE OF VOLUNTEERS, STUDENTS, PART-TIME EMPLOYEES,
13 TERMINAL CONTRACT EMPLOYEES, OR ADJUNCT INSTRUCTORS IN PROVIDING
14 SERVICES AT THE INSTITUTION OF HIGHER EDUCATION.

15 (H) DECISIONS CONCERNING USE OF EXPERIMENTAL OR PILOT PRO-
16 GRAMS AND STAFFING OF EXPERIMENTAL OR PILOT PROGRAMS AND DECI-
17 SIONS CONCERNING USE OF TECHNOLOGY TO DELIVER EDUCATIONAL PRO-
18 GRAMS AND SERVICES AND STAFFING TO PROVIDE THE TECHNOLOGY, OR THE
19 IMPACT OF THESE DECISIONS ON INDIVIDUAL EMPLOYEES OR THE BARGAIN-
20 ING UNIT.

21 (I) THE DECISION OF WHETHER OR NOT TO HAVE AN INSTITUTIONAL
22 TENURE POLICY, THE FINAL DECISION OR THE PROCEDURE FOR MAKING THE
23 FINAL DECISION REGARDING THE AWARD OR DENIAL OF INSTITUTIONAL
24 TENURE OR A FACULTY PROMOTION, AND THE QUALIFICATIONS OR STAN-
25 DARDS FOR THE AWARD OR DENIAL OF INSTITUTIONAL TENURE OR A FAC-
26 ULTY PROMOTION.

1 (J) ANY COMPENSATION OR ADDITIONAL WORK ASSIGNMENT INTENDED
 2 TO REIMBURSE AN EMPLOYEE FOR OR ALLOW AN EMPLOYEE TO RECOVER ANY
 3 MONETARY PENALTY IMPOSED UNDER THIS ACT.

4 (5) ~~(4)~~ The matters described in subsection (3) are pro-
 5 hibited subjects of bargaining between a public school employer
 6 and a bargaining representative of its employees, and, for the
 7 purposes of this act, are within the sole authority of the public
 8 school employer to decide. THE MATTERS DESCRIBED IN SUBSECTION
 9 (4) ARE PROHIBITED SUBJECTS OF BARGAINING BETWEEN A HIGHER EDUCA-
 10 TION EMPLOYER AND A BARGAINING REPRESENTATIVE OF ITS EMPLOYEES,
 11 AND, FOR THE PURPOSES OF THIS ACT, ARE WITHIN THE SOLE AUTHORITY
 12 OF THE HIGHER EDUCATION EMPLOYER TO DECIDE.

13 Sec. 16. (1) Violations of ~~the provisions of~~ section 10
 14 ~~shall be deemed to be~~ ARE unfair labor practices remediable by
 15 the commission in the following manner:

16 (a) ~~Whenever~~ IF it is charged that any person has engaged
 17 in or is engaging in ~~any such~~ AN unfair labor practice, the
 18 commission, or any agent designated by the commission for ~~such~~
 19 THESE purposes, may issue and cause to be served upon the person
 20 a complaint stating the charges in that respect, and containing a
 21 notice of hearing before the commission or a commissioner
 22 ~~thereof,~~ or before a designated agent, at a place ~~therein~~
 23 ~~fixed~~ SPECIFIED IN THE COMPLAINT, not less than 5 days after the
 24 serving of the complaint. ~~No~~ A complaint shall ~~issue~~ NOT BE
 25 ISSUED based upon any unfair labor practice occurring more than 6
 26 months ~~prior to~~ BEFORE the filing of the charge with the
 27 commission and the service of a copy ~~thereof~~ OF THE CHARGE upon

1 the person against whom the charge is made, unless the person
2 aggrieved ~~thereby~~ was prevented from filing the charge by
3 reason of service in the armed forces, in which event the 6-month
4 period shall be computed from the day of ~~his~~ THE PERSON'S
5 discharge. Any complaint may be amended by the commissioner or
6 agent conducting the hearing or the commission ~~at~~ at any time
7 ~~prior to~~ BEFORE the issuance of an order based ~~thereon~~ ON THE
8 COMPLAINT. The person upon whom the complaint is served may file
9 an answer to the original or amended complaint and appear in
10 person or otherwise and give testimony at the place and time
11 fixed in the complaint. In the discretion of the commissioner or
12 agent conducting the hearing or the commission, any other person
13 may be allowed to intervene in the proceeding and to present
14 testimony. Any proceeding shall be conducted pursuant to chapter
15 4 of THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of
16 the Public Acts of 1969, ~~as amended,~~ being sections 24.271 to
17 24.287 of the Michigan Compiled Laws.

18 (b) The testimony taken by the commissioner, agent, or the
19 commission shall be reduced to writing and filed with the
20 commission. Thereafter the commission upon notice may take fur-
21 ther testimony or hear argument. If upon the preponderance of
22 the testimony taken the commission is of the opinion that any
23 person named in the complaint has engaged in or is engaging in
24 the unfair labor practice, then ~~it~~ THE COMMISSION shall state
25 its findings of fact and shall issue and cause to be served on
26 the person an order requiring ~~him~~ THE PERSON to cease and
27 desist from the unfair labor practice, and to take ~~such~~

1 affirmative action, including reinstatement of employees with or
2 without back pay, as will effectuate the policies of this act.
3 The order may further require the person to make reports from
4 time to time showing the extent to which ~~he~~ THE PERSON has com-
5 plied with the order. If upon the preponderance of the testimony
6 taken the commission is not of the opinion that the person named
7 in the complaint has engaged in or is engaging in the unfair
8 labor practice, then the commission shall state its findings of
9 fact and shall issue an order dismissing the complaint. ~~No~~ AN
10 order of the commission shall NOT require the reinstatement of
11 any individual as an employee who has been suspended or dis-
12 charged, or the payment to ~~him~~ THE INDIVIDUAL of any back pay,
13 if the individual was suspended or discharged for cause. If the
14 evidence is presented before a commissioner of the commission, or
15 before examiners ~~thereof~~ APPOINTED BY THE COMMISSION, the com-
16 missioner ~~or~~ or examiners shall issue and cause to be served on
17 the parties to the proceeding a proposed report, together with a
18 recommended order, which shall be filed with the commission. ~~and if~~
19 IF an exception is not filed within 20 days after service
20 ~~thereof~~ OF THE PROPOSED REPORT AND RECOMMENDED ORDER upon the
21 parties, or within ~~such~~ A further period as the commission may
22 authorize, the recommended order ~~shall become~~ IS the order of
23 the commission and ~~become~~ IS effective as prescribed in the
24 order.

25 (c) Until the record in a case has been filed in a court,
26 the commission at any time, upon reasonable notice and in ~~such~~
27 THE manner as it ~~deems~~ CONSIDERS proper, may modify or set

1 aside, in whole or in part, any finding or order made or issued
2 by ~~it~~ THE COMMISSION.

3 (d) The commission or any prevailing party may petition the
4 court of appeals for the enforcement of the order and for appro-
5 priate temporary relief or restraining order, and shall file in
6 the court the record in the proceedings. Upon the filing of the
7 petition, the court shall cause notice ~~thereof~~ OF THE PETITION
8 to be served upon the person, and ~~thereupon~~ UPON SERVICE shall
9 have jurisdiction of the proceeding. ~~and~~ THE COURT shall sum-
10 marily grant ~~such~~ THE temporary or permanent relief or
11 restraining order as it ~~deems~~ CONSIDERS just and proper,
12 enforcing, modifying, enforcing as so modified, or setting aside
13 in whole or in part the order of the commission. ~~No~~ AN objec-
14 tion that has not been urged before the commission ~~—~~ OR its
15 commissioner or agent ~~—~~ shall NOT be considered by the court,
16 unless the failure or neglect to urge the objection is excused
17 because of extraordinary circumstances. The findings of the com-
18 mission with respect to questions of fact, if supported by compe-
19 tent, material, and substantial evidence on the record considered
20 as a whole, ~~shall be~~ ARE conclusive. If either party applies
21 to the court for leave to present additional evidence and shows
22 to the satisfaction of the court that the additional evidence is
23 material and that there were reasonable grounds for the failure
24 to present it in the hearing before the commission ~~—~~ OR its
25 commissioner or agent, the court may order the additional evi-
26 dence to be taken before the commission ~~—~~ OR its commissioner
27 or agent, and to be made a part of the record. The commission

1 may modify its findings as to the facts, or make new findings, by
2 reason of additional evidence so taken and filed. ~~and it~~ THE
3 COMMISSION shall file the modifying or new findings, which find-
4 ings with respect to questions of fact ARE CONCLUSIVE if sup-
5 ported by competent, material, and substantial evidence on the
6 record considered as a whole, ~~shall be conclusive,~~ and shall
7 file its recommendations, if any, for the modification or setting
8 aside of its original order. Upon the filing of the record with
9 ~~it~~ THE COURT, the jurisdiction of the court ~~shall be~~ IS
10 exclusive and ~~its~~ THE COURT'S judgment and decree shall be
11 final, ~~except that the same shall be~~ subject to review by the
12 supreme court in accordance with the general court rules.

13 (e) Any party aggrieved by a final order of the commission
14 granting or denying in whole or in part the relief sought may
15 within 20 days of ~~such~~ THE order as a matter of right obtain a
16 review of the order in the court of appeals by filing in the
17 court a petition praying that the order of the commission be mod-
18 ified or set aside, with copy of the petition filed on the com-
19 mission, and ~~thereupon~~ the aggrieved party shall file in the
20 court the record in the proceeding, certified by the commission.
21 Upon the timely filing of the petition, the court shall proceed
22 in the same manner as in the case of an application by the com-
23 mission under ~~subsection~~ SUBDIVISION (d), and shall summarily
24 grant to the commission or to any prevailing party ~~such~~ tempo-
25 rary relief or restraining order as it ~~deems~~ CONSIDERS just and
26 proper, enforcing, modifying, enforcing as so modified, or
27 setting aside in whole or in part the order of the commission.

1 The findings of the commission with respect to questions of fact,
2 if supported by competent, material, and substantial evidence on
3 the record considered as a whole, ~~shall be~~ ARE conclusive. If
4 a timely petition for review is not filed under this subdivision
5 by an aggrieved party, it shall be conclusively presumed that the
6 commission's order is supported by competent, material, and sub-
7 stantial evidence on the record considered as a whole, and the
8 commission or any prevailing party shall be entitled, upon appli-
9 cation therefor, to a summary order enforcing the commission's
10 order.

11 (f) The commencement of proceedings under ~~subdivisions~~
12 SUBDIVISION (d) or (e) shall not, unless specifically ordered by
13 the court, operate as a stay of the commission's order.

14 (g) Petitions filed under subdivisions (d) and (e) shall be
15 heard expeditiously by the court to which presented, and for good
16 cause shown shall take precedence over all other civil matters
17 except earlier matters of the same character.

18 ~~(h) The commission or any charging party shall have power,~~
19 ~~upon issuance of a complaint as provided in subdivision (a)~~
20 ~~charging that any person has engaged in or is engaging in an~~
21 ~~unfair labor practice, to petition any circuit court within any~~
22 ~~circuit where the unfair labor practice in question is alleged to~~
23 ~~have occurred or where such person resides or exercises or may~~
24 ~~exercise its governmental authority, for appropriate temporary~~
25 ~~relief or restraining order, in accordance with the general court~~
26 ~~rules, and the court shall have jurisdiction to grant to the~~

~~1 commission or any charging party such temporary relief or~~
~~2 restraining order as it deems just and proper.~~

3 (H) ~~(i)~~ For the purpose of all hearings and investigations
4 ~~, which in~~ THAT the ~~opinion of the~~ commission ~~are~~ CONSIDERS
5 necessary and proper for the exercise of the powers vested in it
6 under this section, the provisions of section 11 of Act No. 176
7 of the Public Acts of 1939, ~~as amended,~~ being section 423.11 of
8 the Michigan Compiled Laws, ~~shall be~~ ARE applicable, except
9 that subpoenas may issue as provided in THAT section ~~++~~ without
10 regard to whether mediation ~~shall have~~ HAS been undertaken.

11 (2) ~~(j)~~ The labor relations and mediation functions of
12 this act shall be separately administered by the commission.

13 Sec. 17. (1) A bargaining representative or an education
14 association shall not veto a collective bargaining agreement
15 reached between a public school employer OR HIGHER EDUCATION
16 EMPLOYER and a bargaining unit consisting of employees of the
17 public school employer OR HIGHER EDUCATION EMPLOYER; shall not
18 require the bargaining unit to obtain the ratification of an edu-
19 cation association before or as a condition of entering into a
20 collective bargaining agreement; and shall not in any other way
21 prohibit or prevent the bargaining unit from entering into, rati-
22 fying, or executing a collective bargaining agreement. The power
23 to decide whether or not to enter into, ratify, or execute a col-
24 lective bargaining agreement with a public school employer OR
25 HIGHER EDUCATION EMPLOYER rests solely with the members of the
26 bargaining unit who are employees of the public school employer
27 OR HIGHER EDUCATION EMPLOYER, and shall not be delegated to a

1 bargaining representative or an education association or
2 conditioned on approval by a bargaining representative or an edu-
3 cation association.

4 (2) If an education association, a bargaining representa-
5 tive, or a bargaining unit violates this section, the ~~board of~~
6 ~~a~~ AFFECTED public school employer OR HIGHER EDUCATION EMPLOYER
7 or any other person adversely affected by the violation of this
8 section may bring an action to enjoin the violation of this sec-
9 tion in the circuit court for the county in which the plaintiff
10 resides or the circuit court for the county in which the affected
11 public school employer OR HIGHER EDUCATION EMPLOYER is located.
12 Failure to comply with an order of the court may be punished as
13 contempt. In addition, the court shall award court costs and
14 reasonable attorney fees to a plaintiff who prevails in an action
15 brought under this section.

16 (3) As used in this section, "education association" means
17 an organization, whether organized on a county, regional, area,
18 or state basis, in which employees of 1 or more public school
19 employers OR HIGHER EDUCATION EMPLOYERS participate and that
20 exists for the common purpose of protecting and advancing the
21 wages, hours, and working conditions of the organization's
22 members.