

HOUSE BILL No. 6226

June 18, 2002, Introduced by Rep. Palmer and referred to the Committee on Employment Relations, Training and Safety.

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

by amending sections 10 and 16 (MCL 423.210 and 423.216).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) ~~It shall be unlawful for a~~ A public employer
2 or an officer or agent of a public employer SHALL NOT DO ANY OF
3 THE FOLLOWING:

4 (a) ~~to interfere~~ INTERFERE with, restrain, or coerce
5 public employees in the exercise of their rights guaranteed in
6 section 9. →

7 (b) ~~to initiate~~ INITIATE, create, dominate, contribute to,
8 or interfere with the formation or administration of any labor

1 organization. ~~Provided, That~~ THIS SUBDIVISION DOES NOT
2 PROHIBIT a public employer ~~shall not be prohibited~~ from permit-
3 ting employees to confer with it during working hours without
4 loss of time or pay. ~~→~~

5 (c) ~~to discriminate~~ DISCRIMINATE in regard to ~~hire,~~
6 HIRING OR terms or other conditions of employment in order to
7 encourage or discourage membership in a labor organization. ~~→~~
8 ~~Provided further, That nothing in this act or in any law of this~~
9 ~~state shall preclude a~~ A public employer ~~from making~~ MAY MAKE
10 an agreement with an exclusive bargaining representative ~~as~~
11 ~~defined in~~ DESIGNATED OR SELECTED UNDER section 11 to require as
12 a condition of employment that all employees in the bargaining
13 unit pay to the exclusive bargaining representative a service fee
14 equivalent to the amount of dues uniformly required of members of
15 the exclusive bargaining representative. ~~→~~

16 (d) ~~to discriminate~~ DISCRIMINATE against a public employee
17 because he OR SHE has given testimony or instituted proceedings
18 under this act. ~~→ or~~

19 (e) ~~to refuse~~ REFUSE to bargain collectively with the rep-
20 resentatives of its public employees, subject to ~~the provisions~~
21 ~~of~~ section 11.

22 (2) ~~It is the purpose of this amendatory act to reaffirm~~
23 ~~the continuing public policy of this state that the stability and~~
24 ~~effectiveness of labor relations in the public sector require, if~~
25 ~~such requirement is~~ IF negotiated UNDER A COLLECTIVE BARGAINING
26 AGREEMENT with ~~the~~ A public employer, ~~that~~ all employees in
27 the bargaining unit shall ~~share fairly in the financial support~~

1 ~~of their exclusive bargaining representative by paying~~ PAY to
2 the exclusive bargaining representative a service fee ~~which~~
3 THAT may be equivalent to the amount of dues ~~uniformly~~ required
4 of members of the exclusive bargaining representative.

5 (3) IF A PUBLIC EMPLOYER AGREES TO A SERVICE FEE UNDER SUB-
6 SECTION (2), THE EXCLUSIVE BARGAINING REPRESENTATIVE SHALL ANNU-
7 ALLY FILE WITH THE COMMISSION ALL OF THE FOLLOWING INFORMATION
8 FOR THE EXCLUSIVE BARGAINING REPRESENTATIVE WITHIN 90 DAYS OF THE
9 END OF THE EXCLUSIVE BARGAINING REPRESENTATIVE'S FISCAL YEAR:

10 (A) ALL ASSETS AND LIABILITIES AT THE BEGINNING AND END OF
11 THE FISCAL YEAR.

12 (B) THE SALARY, COST OF FRINGE BENEFITS, ALLOWANCES, AND ANY
13 OTHER DIRECT OR INDIRECT DISBURSEMENTS TO EACH OFFICER OF THE
14 EXCLUSIVE BARGAINING REPRESENTATIVE AND TO ANY EMPLOYEES OF THE
15 EXCLUSIVE BARGAINING REPRESENTATIVE.

16 (C) ALL CONTRIBUTIONS TO STATE OR NATIONAL AFFILIATES OF THE
17 EXCLUSIVE BARGAINING REPRESENTATIVE OR TO ANY OFFICER OF A STATE
18 OR NATIONAL AFFILIATE AND ANY EMPLOYEES OF A STATE OR NATIONAL
19 AFFILIATE.

20 (D) ALL INCOME RECEIVED BY AND THE VALUE OF ANY SERVICES
21 FURNISHED TO THE EXCLUSIVE BARGAINING REPRESENTATIVE BY ANY OF
22 THE FOLLOWING:

23 (i) A PARENT AFFILIATED LABOR ORGANIZATION.

24 (ii) ANY OTHER LABOR ORGANIZATION ON BEHALF OF THE EXCLUSIVE
25 BARGAINING REPRESENTATIVE.

1 (E) THE TOTAL AMOUNT SPENT BY THE EXCLUSIVE BARGAINING
2 REPRESENTATIVE AND THE PERCENTAGE OF TOTAL EXPENDITURES FOR ALL
3 OF THE FOLLOWING:

4 (i) CONTRACT NEGOTIATION AND ADMINISTRATION.

5 (ii) ORGANIZING ACTIVITIES.

6 (iii) STRIKE ACTIVITIES.

7 (iv) LITIGATION, SPECIFYING THE MATTERS AND CASES INVOLVED
8 AND THE NAME, ADDRESS, AND ACTIVITIES OF ANY ATTORNEY, LAW FIRM,
9 LOBBYING FIRM, PUBLIC RELATIONS FIRM, OR OTHER PERSON RETAINED.

10 (v) PUBLIC RELATIONS ACTIVITIES, SPECIFYING THE NAME,
11 ADDRESS, AND ACTIVITIES OF ANY ATTORNEY, LAW FIRM, LOBBYING FIRM,
12 PUBLIC RELATIONS FIRM, OR OTHER PERSON RETAINED.

13 (vi) POLITICAL ACTIVITIES, INCLUDING, BUT NOT LIMITED TO,
14 CONTRIBUTIONS TO POLITICAL CAMPAIGNS, CONTRIBUTIONS TO REFERENDUM
15 OR INITIATIVE CAMPAIGNS, AND EXPRESS ADVOCACY ON BEHALF OF OR IN
16 OPPOSITION TO ANY CANDIDATE FOR ELECTION, REFERENDUM, OR
17 INITIATIVE.

18 (vii) ACTIVITIES INTENDED TO INFLUENCE FEDERAL, STATE, OR
19 LOCAL LEGISLATION, REGULATIONS, OR POLICIES, SPECIFYING THE NAME,
20 ADDRESS, AND ACTIVITIES OF ANY ATTORNEY, LAW FIRM, LOBBYING FIRM,
21 PUBLIC RELATIONS FIRM, OR OTHER PERSON RETAINED.

22 (viii) ISSUE ADVOCACY, VOTER EDUCATION, VOTER REGISTRATION,
23 AND ACTIVITIES INTENDED TO INCREASE VOTER TURNOUT.

24 (ix) TRAINING ACTIVITIES FOR THE EXCLUSIVE BARGAINING
25 REPRESENTATIVE'S OFFICERS OR EMPLOYEES.

1 (x) CONFERENCE, CONVENTION, AND TRAVEL ACTIVITIES ENGAGED IN
2 BY THE EXCLUSIVE BARGAINING REPRESENTATIVE'S OFFICERS OR
3 EMPLOYEES.

4 (F) A LIST OF ANY POLITICAL CANDIDATES AND POLITICAL, CHARI-
5 TABLE, NONPROFIT, OR COMMUNITY ORGANIZATIONS TO WHICH THE EXCLU-
6 SIVE BARGAINING REPRESENTATIVE CONTRIBUTED FINANCIAL ASSISTANCE
7 OR PROVIDED OTHER ASSISTANCE AND THE AMOUNT CONTRIBUTED OR THE
8 FAIR MARKET VALUE OF THE ASSISTANCE PROVIDED.

9 (G) THE NAME AND ADDRESS OF ANY POLITICAL ACTION COMMITTEE
10 WITH WHICH THE EXCLUSIVE BARGAINING REPRESENTATIVE IS AFFILIATED
11 OR TO WHICH IT PROVIDED A CONTRIBUTION, SPECIFYING THE TOTAL
12 AMOUNT OF ANY CONTRIBUTION MADE, THE CANDIDATES OR ISSUES TO
13 WHICH THE COMMITTEE PROVIDED FINANCIAL ASSISTANCE, AND THE AMOUNT
14 OF FINANCIAL ASSISTANCE THE COMMITTEE PROVIDED FOR THOSE CANDI-
15 DATES OR ISSUES.

16 (4) THE REPORT REQUIRED UNDER SUBSECTION (3) SHALL BE PRE-
17 PARED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTING FIRM, USING
18 GENERALLY ACCEPTED AUDITING STANDARDS AND GENERALLY ACCEPTED
19 ACCOUNTING PRINCIPLES. THE INDEPENDENT CERTIFIED PUBLIC ACCOUNT-
20 ING FIRM SHALL REPORT EXPENDITURES OR PORTIONS OF EXPENDITURES OF
21 THE EXCLUSIVE BARGAINING REPRESENTATIVE AS EITHER GERMANE OR NON-
22 GERMANE TO COLLECTIVE BARGAINING, CONTRACT ADMINISTRATION, OR
23 GRIEVANCE PROCESSING.

24 (5) ALL UNION FINANCIAL RECORDS MAINTAINED BY THE EXCLUSIVE
25 BARGAINING REPRESENTATIVE UNDER SUBSECTION (3) SHALL BE MAIN-
26 TAINED IN COMPLIANCE WITH GENERALLY APPROVED ACCOUNTING
27 PRINCIPLES.

1 (6) ~~(3) It shall be unlawful for a~~ A labor organization or
2 its agents SHALL NOT DO ANY OF THE FOLLOWING:

3 (a) ~~to restrain~~ RESTRAIN or coerce EITHER OF THE
4 FOLLOWING:

5 (i) ~~public~~ PUBLIC employees in the exercise of ~~the~~ THEIR
6 rights guaranteed in section 9. ~~∴ Provided, That this subdivi-~~
7 ~~sion shall~~ THIS SUBPARAGRAPH DOES not impair the right of a
8 labor organization to prescribe its own rules with respect to the
9 acquisition or retention of membership ~~therein; or~~ IN THE
10 ORGANIZATION.

11 (ii) ~~a~~ A public employer in the selection of its represen-
12 tatives for the ~~purposes~~ PURPOSE of collective bargaining or
13 the adjustment of grievances. ~~→~~

14 (b) ~~to cause~~ CAUSE or attempt to cause a public employer
15 to discriminate against a public employee in violation of
16 ~~subdivision (c) of~~ subsection ~~(1); or~~ (1)(C).

17 (c) ~~to refuse~~ REFUSE to bargain collectively with a public
18 employer, ~~provided it~~ IF THE LABOR ORGANIZATION, SUBJECT TO
19 SECTION 11, is the representative of the public employer's
20 employees. ~~subject to section 11.~~

21 (D) FAIL OR REFUSE TO PREPARE THE REPORT REQUIRED UNDER SUB-
22 SECTION (3).

23 Sec. 16. (1) Violations of ~~the provisions of~~ section 10
24 ~~shall be deemed to be~~ ARE unfair labor practices AND, EXCEPT AS
25 OTHERWISE PROVIDED IN SUBSECTION (2) FOR A VIOLATION OF SECTION
26 10(3), ARE remediable by the commission in the following manner:

1 (a) ~~Whenever~~ IF it is charged that ~~any~~ A person has
2 engaged in or is engaging in ~~any such~~ AN unfair labor practice,
3 the commission ~~,~~ or any agent designated by the commission ~~for~~
4 ~~such purposes,~~ may issue and cause to be served upon the person
5 a complaint stating the charges ~~in that respect,~~ and containing
6 a notice of hearing before the commission, ~~or~~ a commissioner,
7 ~~thereof,~~ or ~~before~~ a designated agent, at a place ~~therein~~
8 ~~fixed~~ STATED IN THE NOTICE OF HEARING, not less than 5 days
9 after the ~~serving of the~~ complaint IS SERVED. ~~No~~ EXCEPT AS
10 OTHERWISE PROVIDED IN THIS SUBDIVISION, A complaint shall ~~issue~~
11 NOT BE ISSUED based upon any unfair labor practice ~~occurring~~
12 THAT OCCURS more than 6 months ~~prior to the filing of~~ BEFORE
13 the charge IS FILED with the commission and ~~the service of~~ a
14 copy ~~thereof upon~~ SERVED ON the person against whom the charge
15 is made. ~~, unless the~~ IF A person aggrieved ~~thereby~~ BY AN
16 UNFAIR LABOR PRACTICE was prevented from filing ~~the~~ A charge by
17 reason of service in the armed forces, ~~in which event~~ the
18 6-month period shall be computed from the day of his OR HER
19 discharge. ~~Any~~ A complaint may be amended by the commissioner,
20 ~~or~~ AN agent conducting the hearing, or the commission, at any
21 time ~~prior to the issuance of~~ BEFORE an order based ~~thereon~~
22 ON THE COMPLAINT IS ISSUED. The person upon whom the complaint
23 is served may file an answer to the original or amended complaint
24 and appear in person or otherwise and give testimony at the place
25 and time fixed in the complaint. In the discretion of the
26 commissioner, ~~or~~ AN agent conducting the hearing, or the
27 commission, any other person may be allowed to intervene in the

1 proceeding and to present testimony. ~~Any~~ A proceeding shall be
2 conducted pursuant to chapter 4 of ~~Act No. 306 of the Public~~
3 ~~Acts of 1969, as amended, being sections 24.271 to 24.287 of the~~
4 ~~Michigan Compiled Laws~~ THE ADMINISTRATIVE PROCEDURES ACT OF
5 1969, 1969 PA 306, MCL 24.271 TO 24.287.

6 (b) ~~The testimony~~ TESTIMONY taken by the commissioner,
7 agent, or ~~the~~ commission shall be reduced to writing and filed
8 with the commission. Thereafter, the commission, upon notice,
9 may take further testimony or hear argument. If, upon the pre-
10 ponderance of the testimony taken, the commission is of the opin-
11 ion that ~~any~~ A person named in the complaint has engaged in or
12 is engaging in the unfair labor practice CHARGED, then ~~it~~ THE
13 COMMISSION shall state its findings of fact and ~~shall~~ issue and
14 cause to be served on the person an order requiring him OR HER to
15 cease and desist from the unfair labor practice ~~,~~ and to take
16 ~~such~~ affirmative action, including reinstatement of employees
17 with or without back pay, ~~as will~~ TO effectuate the policies of
18 this act. The order may ~~further~~ ALSO require the person
19 CHARGED to make reports from time to time showing the extent to
20 which he OR SHE has complied with the order. If, upon the pre-
21 ponderance of the testimony taken, the commission is ~~not~~ of the
22 opinion that the person named in the complaint has NOT engaged in
23 or is NOT engaging in the unfair labor practice CHARGED, ~~then~~
24 the commission shall state its findings of fact and shall issue
25 an order dismissing the complaint. ~~No~~ AN order of the commis-
26 sion shall NOT require the reinstatement of any individual as an
27 employee who has been suspended or discharged, or the payment to

1 him OR HER of any back pay, if the individual was suspended or
 2 discharged for cause. If the evidence is presented before a com-
 3 missioner OR AN EXAMINER of the commission, ~~or before examiners~~
 4 ~~thereof,~~ the commissioner ~~,~~ or ~~examiners~~ EXAMINER shall
 5 issue and cause to be served on the parties to the proceeding a
 6 proposed report, together with a recommended order, which shall
 7 be filed with the commission. ~~, and if~~ IF an exception TO THE
 8 RECOMMENDED ORDER is not filed within 20 days after service
 9 ~~thereof upon~~ ON the parties, or within ~~such further~~ AN
 10 ADDITIONAL period ~~as~~ AUTHORIZED BY the commission, ~~may~~
 11 ~~authorize,~~ the recommended order shall become the order of the
 12 commission and ~~become~~ IS effective as prescribed in the order.

13 (c) Until the record in a case has been filed in a court,
 14 the commission MAY at any time, upon reasonable notice and in
 15 ~~such~~ THE manner ~~as~~ it ~~deems~~ CONSIDERS proper, ~~may~~ modify
 16 or set aside, in whole or in part, any finding or order made or
 17 issued by it.

18 (d) The commission or any prevailing party may petition the
 19 court of appeals for the enforcement of the order and for appro-
 20 priate temporary relief or restraining order, and shall file in
 21 the court the record in the proceedings. Upon the filing of the
 22 petition, the court shall cause notice ~~thereof~~ OF THE PETITION
 23 to be served upon the person ~~,~~ ~~and thereupon shall have~~ AGAINST
 24 WHOM ENFORCEMENT IS SOUGHT. AFTER NOTICE OF THE PETITION IS
 25 SERVED, THE COURT HAS jurisdiction of the proceeding and shall
 26 summarily grant ~~such~~ temporary or permanent relief or A
 27 restraining order, ~~as it deems just and proper,~~ enforcing,

1 modifying, enforcing as ~~so~~ modified, or setting aside, in whole
2 or in part, the order of the commission. ~~No~~ AN objection that
3 has not been ~~urged before~~ PRESENTED TO the commission ~~,~~ OR
4 its commissioner or agent ~~,~~ shall NOT be considered by the
5 court, unless the failure or neglect to ~~urge~~ PRESENT the objec-
6 tion is excused because of extraordinary circumstances. The
7 findings of the commission with respect to questions of fact, if
8 supported by competent, material, and substantial evidence on the
9 record considered as a whole, ~~shall be~~ ARE conclusive. If
10 either party applies to the court for leave to present additional
11 evidence and shows to the satisfaction of the court that the
12 additional evidence is material and that there were reasonable
13 grounds for the failure to present it in the hearing before the
14 commission ~~,~~ OR its commissioner or agent, the court may order
15 the additional evidence to be taken before the commission ~~,~~ OR
16 its commissioner or agent ~~,~~ and to be made a part of the
17 record. The commission may modify its findings as to the facts,
18 or make new findings, ~~by reason~~ BECAUSE of THE additional evi-
19 dence ~~so~~ taken and filed. ~~, and it~~ THE COMMISSION shall file
20 the modifying or new findings, which findings with respect to
21 questions of fact, if supported by competent, material, and sub-
22 stantial evidence on the record considered as a whole, ~~shall be~~
23 ARE conclusive, and shall file its recommendations, if any, ~~for~~
24 ~~the modification or setting~~ TO MODIFY OR SET aside ~~of~~ its
25 original order. ~~Upon the filing of the record with it the~~ THE
26 COURT'S jurisdiction ~~of the court shall be~~ IS exclusive and its
27 judgment and decree ~~shall be~~ IS final, ~~except that the same~~

1 ~~shall be~~ subject to review by the supreme court in accordance
2 with the general court rules.

3 (e) ~~Any~~ A party aggrieved by a final order of the commis-
4 sion granting or denying, in whole or in part, the relief sought
5 may ~~within 20 days of such order as a matter of right~~ obtain a
6 review of the order in the court of appeals by filing in the
7 court WITHIN 20 DAYS OF THE ORDER a petition ~~praying~~ REQUESTING
8 that the order of the commission be modified or set aside. ~~—~~
9 ~~with~~ A copy of the petition SHALL BE filed on the commission. ~~—~~
10 ~~and thereupon the~~ THE aggrieved party shall file in the court
11 the record in the proceeding, certified by the commission. ~~Upon~~
12 ~~the timely filing of~~ IF the petition IS TIMELY FILED, the court
13 shall proceed in the same manner as in the case of an application
14 by the commission under ~~subsection~~ SUBDIVISION (d), and shall
15 summarily grant ~~to the commission or to any prevailing party~~
16 ~~such~~ temporary relief or A restraining order, ~~as it deems just~~
17 ~~and proper,~~ enforcing, modifying, enforcing as ~~so~~ modified, or
18 setting aside in whole or in part the order of the commission.
19 The findings of the commission with respect to questions of fact,
20 if supported by competent, material, and substantial evidence on
21 the record considered as a whole, ~~shall be~~ ARE conclusive. If
22 a timely petition for review is not filed under this subdivision
23 by an aggrieved party, it shall be conclusively presumed that the
24 commission's order is supported by competent, material, and sub-
25 stantial evidence on the record considered as a whole, and the
26 commission or any prevailing party ~~shall be~~ IS entitled, upon

1 application, ~~therefor,~~ to a summary order enforcing the
2 commission's order.

3 (f) The commencement of proceedings under subdivisions (d)
4 or (e) shall not, unless specifically ordered by the court, oper-
5 ate as a stay of the commission's order.

6 (g) Petitions filed under ~~subdivisions~~ SUBDIVISION (d)
7 ~~and~~ OR (e) shall be heard expeditiously by the court, ~~to which~~
8 ~~presented,~~ and for good cause shown shall take precedence over
9 all other civil matters except earlier matters of the same
10 character.

11 (h) The commission or any charging party ~~shall have power,~~
12 ~~upon issuance of a complaint as provided in~~ MAY, AFTER A COM-
13 PLAINT IS ISSUED UNDER subdivision (a), ~~charging that any person~~
14 ~~has engaged in or is engaging in an unfair labor practice, to~~
15 petition ~~any~~ THE circuit court ~~within any circuit~~ where the
16 unfair labor practice in question is alleged to have occurred or
17 where ~~such~~ THE person CHARGED resides or exercises or may exer-
18 cise its governmental authority, for appropriate temporary relief
19 or A restraining order. ~~, in accordance with the general court~~
20 ~~rules, and the~~ THE CIRCUIT court ~~shall have~~ HAS jurisdiction
21 to grant to the commission or any charging party ~~such~~ THE tem-
22 porary relief or restraining order ~~as it deems just and~~
23 CONSIDERS proper.

24 (i) For ~~the purpose of~~ all hearings and investigations,
25 which in the opinion of the commission are necessary ~~and proper~~
26 for the exercise of the powers vested in it under this section,
27 the provisions of section 11 of ~~Act No. 176 of the Public Acts~~

1 of 1939, ~~as amended, being section 423.11 of the Michigan~~
2 ~~Compiled Laws, shall be~~ 1939 PA 176, MCL 423.11, ARE applicable,
3 except that subpoenas may issue ~~as provided in section 11~~ with-
4 out regard to whether mediation ~~shall have~~ HAS been
5 undertaken.

6 (j) The labor relations and mediation functions of this act
7 shall be separately administered by the commission.

8 (2) A FAILURE OR REFUSAL TO PROVIDE THE REPORT REQUIRED
9 UNDER SECTION 10(3) IS AN UNFAIR LABOR PRACTICE AND IS REMEDIABLE
10 BY THE COMMISSION IN THE FOLLOWING MANNER:

11 (A) FOR ANY FAILURE OR REFUSAL, THE COMMISSION SHALL ORDER
12 THE EXCLUSIVE BARGAINING REPRESENTATIVE TO REFUND ALL MEMBERSHIP
13 DUES OR SERVICE FEES TO EMPLOYEES OF THE BARGAINING UNIT FOR THE
14 PERIOD COVERED BY THE REPORT.

15 (B) FOR A SECOND FAILURE OR REFUSAL, THE COMMISSION SHALL
16 ORDER AN ELECTION IN THE BARGAINING UNIT AFFECTED PURSUANT TO
17 SECTION 12 AS TO WHETHER THE LABOR ORGANIZATION WILL CONTINUE TO
18 BE THE EXCLUSIVE BARGAINING REPRESENTATIVE FOR THE BARGAINING
19 UNIT AS PROVIDED IN SECTION 11. THE ELECTION SHALL BE CONDUCTED
20 UPON THE EXPIRATION OF ANY EXISTING COLLECTIVE BARGAINING
21 AGREEMENT.