

# Council Comments:

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CITIZENS RESEARCH COUNCIL OF MICHIGAN IS A 501(C)(3) TAX EXEMPT ORGANIZATION

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## PUBLIC SECTOR STRIKES IN MICHIGAN: AN UPDATE

### THE ISSUE IN BRIEF

Public Act 112 of 1994, which recently was passed by the state Legislature and signed into law by the Governor, changes in several respects the public sector collective bargaining law of Michigan as it relates to public school employers and employees. While Act 112 was signed into law on May 2, 1994, it will not take effect until April 1, 1995 because the Legislature did not adopt the act by the two-thirds majority vote necessary to give it immediate effect. Act 112 will:

- significantly narrow the scope of bargaining. A public school employer and an employee bargaining representative (union) no longer will be permitted to bargain about: the policyholder of employee group insurance benefits; the school year starting day; the composition of site-based decisionmaking bodies, or school improvement committees; whether a school district should act as an authorizing body to grant a charter for public school academies, or to grant a leave of absence to public school employees wishing to participate in a public school academy; whether to privatize noninstructional support services, or to use volunteers; or the use of experimental educational or pilot programs. Under Act 112, these matters would fall within the sole discretion of public school employers.
- require that any public school employee determined to have engaged in a strike be fined one day's pay for each full or partial day of the strike. The employee bargaining representative would be fined \$5,000 for each full or partial day of a strike. Strikes by public employees in Michigan, including those who work in public schools, have been illegal since 1947 and will remain so under Act 112.
- prohibit lockouts. Any public school employer which instituted a lockout would be fined \$5,000 for each full or partial day of the lockout. Individual school board members would be fined \$250 for each full or partial day of the lockout.
- prohibit a bargaining representative or education association from vetoing a collective bargaining agreement reached between a public school employer and a local bargaining unit or from requiring that a local bargaining unit receive education association ratification before entering into a collective bargaining agreement.
- prohibit a public school employer from offering compensation to an employee or school board member as reimbursement for a fine.

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## **I. Background: The Hutchinson Act**

Public Act 336 of 1947, also known as the Hutchinson Act prohibits strikes by public sector employees in Michigan. The Hutchinson Act also imposed substantial penalties upon employees who struck in violation of the law but permitted employees to "meet and confer" with their employer regarding wages, hours, and other terms and conditions of employment. However, a public employer was under no legal obligation to bargain with its employees.

### **A. The Public Employment Relations Act**

In 1965, the state Legislature amended the Hutchinson Act when it adopted Public Act 379. The Hutchinson Act as amended is commonly referred to as the public employment relations act or PERA. The public employment relations act is considered to be the predominant state statute which governs public employment relations in Michigan, except in the state classified civil service. (Employment in the state civil service is under the exclusive constitutional jurisdiction of the state civil service commission. Employment relations in the private sector are governed principally by the national labor relations act.)

#### **1. Significant Changes Enacted by PERA**

The public employment relations act amended the Hutchinson Act in two significant respects. First, the "meet and confer" system under the Hutchinson Act, which did not require a public employer to bargain with its employees, was replaced by a collective bargaining system under which both public employers and unions are legally obligated to bargain in good faith on matters "with respect to wages, hours, and other terms and conditions of employment." The duty to bargain in good faiths which does not compel either party to accept a proposal or make a concessions has generally been considered by the courts to have been satisfied where each side manifests an attitude and conduct which will be conducive to reaching an agreement.

Seconds while the public employment relations act retained the existing prohibition against public sector strikes that had been enacted in 1947, as well as the definition of what activity constituted a strike, the act repealed existing penalties which could be imposed when strikes occurred. The effect which this latter change had upon public sector strike activity became manifest almost immediately. Prior to 1965, public sector strikes in Michigan were so rare that no state agency maintained such records. However, 11 public sector strikes were recorded within the first year after the public employment relations act took effect and 181 such strikes were recorded within the first five years (See **Table 1**). It is noteworthy that public school employee strikes have accounted for 77 percent of all strikes that have occurred since 1965.

### **B. Public Act 112 of 1994**

#### **1. Scope of Bargaining**

The most significant aspect of Public Act 112 is that it substantially narrows the scope of bargaining in so far as public school employees are affected. Under the public employment relations act, subjects of bargaining fall generally into one of three categories: mandatory, permissive and prohibited (illegal).

A **mandatory subject** of bargaining is one with respect to which, when raised by either party, both parties are obligated to bargain. In a broad sense, mandatory subjects are those

encompassed within the phrase "wages, hours, and other terms and conditions of employment." Traditionally, the courts have decided whether a particular subject is a mandatory one on a case by case basis. **Permissive subjects** of bargaining may be viewed, in a broad sense, as management prerogatives because bargaining may occur upon permissive subjects only at the consent of both parties. **Prohibited subjects** are ones which, even if bargained upon, cannot be enforced in a collective bargaining agreement because to do so would contravene public policy. An example of a prohibited subject would be a provision requiring a closed shop.

Public Act 112 of 1994 narrows the scope of bargaining (thereby broadening the management prerogatives of public school employers) by removing certain topics from the category of mandatory subjects of bargaining. Act 112 prohibits bargaining over the policyholder of employee group insurance benefits; the school year starting day; the makeup of site-based decisionmaking bodies or of school improvement committees; whether school districts should act as an authorizing body to grant a charter for public school academies or a leave of absence to a public school employee wishing to participate in an academy; whether to privatize noninstructional support services or to use volunteers; or the use of experimental educational or pilot programs.

## **2. Penalties for Strikes and Lockouts**

To date, a majority of the attention regarding Public Act 112 has focused upon those provisions of the statute which require that fines be levied for strikes and lockouts. For two reasons, however, these are not the most significant features of Act 112. First, as has been noted, public sector strikes have been illegal in this state since 1947 and will remain so under Act 112. Therefore, Act 112 reflects no sea change in the public policy of Michigan so far as public sector strikes are concerned. To the contrary, the fines authorized to be imposed by the Michigan employment relations commission against public school employees and bargaining representatives who strike (and against public school employers that institute a lockout) in violation of state law may be viewed as no more than a decision by state policymakers to strengthen a law which has so routinely been Ignored. Second, while the fines authorized by Act 112 will no doubt pose a deterrent to future illegal strikes, the number of public sector strikes has already diminished somewhat in recent years (See **Table 1**).

## **3. Imposition of Employer's Last Best Offer**

Act 112 also authorizes a public school employer and its employees' bargaining representative by mutual agreement to engage in mediation to resolve impasses. (This voluntary mediation is in addition to that already required under existing law.) In the event that voluntary mediation is unsuccessful, Act 112 authorizes public school employers to unilaterally institute their last offer of settlement made before impasse was reached. Here again, no real departure from current law is reflected. While the public employment relations act imposes a mutual duty to bargain, there is no requirement that the parties must reach agreement. Under current law, where parties bargain in good faith on a mandatory subject of bargaining but reach impasse, the employer may take unilateral action on that issues provided that action is consistent with the terms of its final offer before impasse was reached.

**Table 1**  
**Public Sector Strikes in Michigan, 1965-1993**

	Police & Fire	School Dist	College & Univ	All Other	Total		Police & Fire	School Dist	College & Univ	All Other	Total
1965	0	11	0	0	11	1980	0	48	0	10	61
1966	0	6	0	9	15	1981	0	12	2	5	15
1967	0	45	0	7	52	1982	0	23	0	1	24
1968	0	25	0	14	39	1983	0	43	1	2	46
1969	0	58	0	6	64	1984	0	14	4	1	15
1970	1	26	6	11	44	1985	0	7	2	1	10
1971	0	11	3	5	19	1986	0	10	3	5	15
1972	0	18	2	2	22	1987	0	23	0	1	24
1973	0	56	4	5	85	1988	0	15	0	0	22
1974	0	27	2	15	45	1989	0	13	1	0	14
1975	0	9	3	0	20	1990	0	14	0	1	15
1976	0	8	4	8	20	1991	0	12	1	1	14
1977	0	15	2	11	29	1992	0	11	0	0	11
1978	0	35	4	6	45	1993	0	4	0	0	4
1979	0	72	5	10	87						
						Total	1	676	55	146	878

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Sources: 1965-1969, Michigan Department of Labor Annual Reports; 1970-1993, Michigan Employment Relations Commission, Bi-Weekly Work Stoppage Reports; CRC calculation.