

TEACHERS: No lawful right to strike.

Penalties for unlawful strike.

SCHOOLS: Districts — Authority of board of education to recognize exclusive negotiating representative for school teachers.

School teachers employed by school district are public employees without lawful right to strike.

School teachers who strike against school district are subject to loss of employment and pension and retirement rights, except if re-employed by the Board of Education. Re-employment of such teacher subject to same compensation prevailing at the time of violation of Act 336, P.A. 1947, and for one year thereafter. In addition, the re-employed teacher is to be on probation for two years at the pleasure of the Board of Education, as prescribed in Sec. 5 of Act 336, P.A. 1947.

The Board of Education of a school district *may, in its discretion, recognize* for the purpose of resolving differences concerning salary, status, teaching conditions, personal welfare or other related problems, as the exclusive negotiating representative that association of teachers which receives a majority of the teachers' vote at a representation election.

The Board of Education of a school district *is not required* to recognize for the purpose of resolving differences concerning salary, status, teaching conditions, personal welfare or other related problems, as the exclusive negotiating representative that association of teachers which receives a majority of the teachers' vote at a representation election.

No. 4306

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You advise that on March 4, 1964 the Board of Education of the School District of the City of Detroit adopted a statement of policy proposing to set up a Teachers' Representative Committee for the purpose of resolving any differences concerning salary, status, teaching conditions, personal welfare or other related problems, and providing in general for an election to be conducted among teacher employees of the said board of education to determine the representation any teacher association shall have on the Teachers' Representative Committee bearing the same ratio to 11 as the number of ballots cast for such association bears to the total ballots cast for all teacher associations. It is proposed that the Teachers' Representative Committee be composed of 11 members representing the various teacher associations in the ratio above provided. According to said statement of policy the Teachers' Representative Committee will meet regularly with the board of education through its designated representatives for the purpose of resolving any differences in the aforesaid terms and conditions of employment that may arise. It should be observed that in said policy the board of education recognizes the right of any individual teacher to handle his own disputes individually and without representation with the said board of education or its representatives.

Based upon these facts you ask the following questions:

"1. May school teachers employed by the school district of the City of Detroit lawfully strike against the school district?

"2. Does the Board of Education of the school district of the City of Detroit *have the authority in its discretion* to recognize as the exclusive negotiating representative for the purpose of carrying out the procedures outlined by the Board that association of teachers which receives a majority of the teachers' votes at a representation election?

"3. Is the Board of Education of the school district of the City of Detroit *required* to recognize as the exclusive negotiating representative for the purpose of carrying out the procedures outlined by the Board that association of teachers which receives a majority of the teachers' votes in a representation election?"

1. A public school teacher is an employee and not an officer of a school district. *Attorney General v. Board of Education of the City of Detroit*, 225 Mich. 237 (1923).

Act 336, P.A. 1947, being C.L. 1948 § 423.201 et seq.; M.S.A. 1960 Rev. Vol. § 17.455(1) et seq., prohibits strikes by certain public employees through failure to report for work, or the abstinence in whole or in part from complete performance of duties for the purpose of inducing, influencing or coercing a change in terms and conditions of public employment.

Sec. 2 of the act expressly commands that no person holding employment in the public school service shall strike.

Persons violating the provisions of this act shall be deemed to have abandoned and terminated their employment and shall no longer hold such employment or be entitled to any of the rights or emoluments thereof, including pension or retirement benefits, except if appointed or reappointed in accordance with the act, as provided in Sec. 4 thereof. In addition, as provided in Sec. 5 of the act, any person knowingly violating the provisions of the act may subsequent to such violation be appointed or reappointed, employed or re-employed, but only on the following conditions:

1. His compensation cannot exceed that received by him immediately prior to the time of violation;

2. His compensation shall not be increased until after the expiration of 1 year from such appointment or reappointment, employment or re-employment; and

3. Such person shall be on probation for a period of 2 years following his re-employment during which period he shall serve without tenure and at the pleasure of the appointing officer or body.

With the bar of strikes by public employees the legislature has in Sec. 7 of the act provided for mediation of grievances by the State Labor Mediation Board upon filing of petition signed by the majority of any given group of public employees.

The Michigan Supreme Court in *City of Detroit v. Division 26 of AASER & MCE of A*, 332 Mich. 237 (1952), in upholding the constitutionality of Act 336, P.A. 1947, supra, found the public policy of the statute to be that strikes by public employees were to be prevented.

In the *City of Detroit* case, supra, the court cited authorities from other states that public employees had no right under the common law to strike, and quoted with approval from *Norwalk Teachers' Association v. Board of Education of City of Norwalk*, (Conn. 1951) 83 A 2d 482. A more recent case barring the right of lawful strike to school teachers is *City of Pawtucket v. Pawtucket Teachers Alliance, Local 930*, (R.I. 1958) 141 A 2d 624.

The law is abundantly clear, therefore, that school teachers employed by the board of education of the school district of the City of Detroit do not have the lawful right to strike. Any school teacher knowingly violating the provisions of Act 336, P.A. 1947, supra, shall be deemed to have abandoned or terminated his employment. In addition, pension and retirement benefits are to be forfeited. In the event that the board of education of the City of Detroit were to re-employ a teacher who has knowingly violated the provisions of the aforesaid act, such re-employment is subject to the conditions that compensation cannot exceed that which was paid immediately prior to the time of violation of the act, the compensation cannot be increased for a period of 1 year from the time of such re-employment, and such person shall be on probation for a period of 2 years following such re-employment during which period he shall serve without tenure and at the pleasure of the board of education.

The legislature may provide by statute that public employees may enforce their rights to collective negotiation by arbitration or strike, *City of Manchester v. Manchester Teachers Guild*, (N.H. 1957), 131 A 2d 59. It is equally clear that the Michigan legislature has not afforded the lawful right to strike to school teachers employed by school districts. On the contrary, school teachers are proscribed from striking, subject to penalty in accordance with the provisions of Act 336, P.A. 1947, supra.

In this regard, it should be emphasized that if school teachers employed by the board of education of the school district of the City of Detroit knowingly strike against the school district, the Board of Education of the school district is not required to re-employ such school teachers violating the provisions of the act. Since Sections 4 and 5 of Act 336, P.A. 1947 impose clear duties upon the board of education, should it determine that teachers in violation of the provisions of Act 336, P.A. 1947 be re-employed, the conditions under which it may re-employ such teachers are precisely fixed by the legislature and must be met. The board of education is bound by the statute.

Therefore, in answer to your first question, it is the opinion of the Attorney General that a school teacher employed by the board of education of the school district of the City of Detroit may not strike against the school district without suffering penalty of loss of employment in accordance with the provisions of Sec. 4 of Act 336, P.A. 1947. In the event such teacher knowingly violates the provisions of said act, re-employment, if any, must be in accordance with the conditions prescribed in Sec. 5 thereof.

2. Your second question is premised upon the proposition that the policy statement of the said board of education would be modified to authorize the recognition of a single, exclusive teacher association as representative.

Boards of education of school districts have such powers, express or implied, as the legislature confers by statute. *Jacox v. Board of Education of Van Buren Consolidated School District*, 293 Mich. 126 (1940).

Act 269, P.A. 1955, as amended, being C.L.S. 1956, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955. Section 569, thereof, empowers the board of education of every school district to hire and contract with duly qualified teachers as may be required.

The provisions of the School Code of 1955 are silent concerning the authority of a board of education to recognize for the purpose of resolving differences concerning the salary, status, teaching conditions, personal welfare or other related problems, as the exclusive negotiating representative that association of teachers which receives a majority of teachers' votes at a representation election. Nor does the School Code of 1955, by its express terms, bar such recognition by the board of education.

There is no decision of the Michigan Supreme Court passing upon the authority of a board of education to recognize a teacher association as the sole representative for the purpose of carrying out the procedures outlined by the board of education of the school district of the City of Detroit.

The Connecticut Court of Errors in *Norwalk Teachers' Association v. Board of Education of the City of Norwalk*, supra, considered the problem whether the board of education had authority to negotiate with a teacher association in behalf of its members. The court concluded that in the absence of a statute forbidding negotiating with a school teacher association in regard to employment, grievance procedures and working conditions of the members of the association, the board of education was authorized to negotiate with the association as it was free to negotiate with a committee of the whole association or with the individuals themselves or similar related groups. The court stressed that not only did the teachers have no lawful right to strike, but the board of education could not surrender its legal discretion relative to terms and conditions of employment. By choosing to negotiate with the teachers association, the board of education did not thereby illegally delegate its authority to fix the terms and conditions of employment.

To the same effect is the case of *City of Pawtucket v. Pawtucket Teachers Alliance, Local 903*, supra, where the court, in ruling that the teachers did not have a lawful right to strike, stated the following on page 629 of the opinion:

"While we hold that those accepting government employment as teachers must acknowledge that the functions of government in a democracy cannot be impeded or obstructed by strikes, *we recognize their rights collectively* as well as individually to present demands for just and reasonable remuneration for their services." (Emphasis supplied)

In *Civil Service Forum v. New York City Transit Authority*, 163 N.Y.S. 2d 476 (1957), affirmed in 150 N.E. 2d 705, the court held that the defendant public body as a governmental agency was authorized to enter into a collective bargaining agreement with a labor union as the representative of

the employees, although the court refused to pass upon the question of whether the contract made the union the exclusive bargaining agent. The court carefully observed that the governmental agency could not be compelled to bargain collectively with employees or enter into agreements with them. However, the court emphasized that the public body was empowered to limit representation of employees in grievance disputes to a labor organization receiving a majority vote of the employees.

It must be concluded that in the absence of statute providing to the contrary, a board of education can limit representation of employees in resolving differences involving salary, working conditions, personal welfare or other related problems to the teacher association receiving a majority of the teachers' votes at the representation election. At the same time the right of the individual teacher to handle his own dispute individually and without representation with the said board of education is preserved.

Consideration must also be given to the decision of Circuit Judge Smith in *Board of County Road Commissioners of Washtenaw County v. State Labor Mediation Board*, Circuit Court for the County of Washtenaw, Law W 160, not appealed to the Michigan Supreme Court, ordering a writ of mandamus issued November 22, 1961, compelling the Board of County Road Commissioners of Washtenaw County to participate in good faith mediation with the State Mediation Board and Local 453, American Federation of State, County and Municipal Employees, AFL-CIO, as the representative of the majority of the hourly public employees of that public body.

In *Garden City School District v. Labor Mediation Board*, 358 Mich. 258 (1959), the Michigan Supreme Court upheld as valid petitions for mediation of certain disputes between persons holding positions as public school teachers and the school district employing them. The petitions in question named a labor organization as the representative of the public school teachers for the purpose of mediation of grievances, and the court found that there were sufficient signatures to validate the petition, thus conferring the jurisdiction on the Labor Mediation Board to mediate the grievances between the public school teachers represented by the labor organization and the school district.

Because the board of education of the school district of the City of Detroit has statutory power to determine terms and conditions of employment of teachers, it must follow that it is authorized in its discretion to recognize as the exclusive negotiating representative for the purpose of carrying out the procedures outlined by the board that association of teachers which receives a majority of the teachers' votes at a representation election.

Since the legislative discretion to determine the terms and conditions of services to be performed by teachers rests *finally* in the board of education of the school district, a decision of the board of education to recognize a teacher association as the exclusive negotiating representative for the purpose of carrying out the procedures as outlined by the above board does not constitute a surrender of such discretion to the teacher association. See the special concurring opinion of Mr. Justice Pringle in *Fellows v. LaTronica* (Colo. 1962) 377 P. 2d 547.

In the event the board of education of the school district of the city of Detroit chooses to recognize the teacher association which receives the majority of the teachers' votes at a representation election as the exclusive negotiating representative for the purpose of resolving differences in terms and conditions of employment, and as a result of such negotiations such differences are resolved, benefits accruing from such negotiations would have to be available to teachers of the school district without discrimination as to membership or lack of membership in such teacher association. The board of education is without authority to require membership in such teacher association as a condition precedent to receipt of the benefits of such negotiations. *Benson v. School District No. 1 of Silver Bow County* (Mont. 1959), 344 P. 2d 117.

Therefore, it is my opinion that a board of education of a school district is empowered, *in its discretion*, to recognize as the exclusive representative an association of teachers which receives a majority of the teachers' votes at a representation election for the purpose of negotiating differences concerning salary, status, working conditions, personal welfare or other related problems.

3. There is no provision found in the School Code of 1955, *supra*, that would require the board of education of the school district of the City of Detroit to recognize as the exclusive negotiating representative for the purpose of carrying out the procedures outlined by the board that association of teachers which receives a majority of teachers' votes in a representation election. In the absence of such a requirement, exclusive recognition of the teacher association polling the majority of the teachers' votes in the representation election must rest in the sound discretion of the board of education.

Therefore, it is my opinion that the board of education of the school district of the City of Detroit is *not required* to recognize the teacher association receiving a majority of the teachers' votes in a representation election as the exclusive negotiating representative for the purpose of carrying out the procedures as outlined by the board relative to salary, status, working conditions, personal welfare or other related problems.

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