

**In the
Supreme Court of Ohio**

MAHONING EDUCATION ASSOC.
OF DEVELOPMENTAL DISABILITIES,

Appellee,

v.

STATE EMPLOYMENT RELATIONS
BOARD, et al.,

Appellants.

Case No. 2012-12-1378

On Appeal from the
Mahoning County
Seventh Appellate District

Court of Appeals Case
No. 11 MA 52

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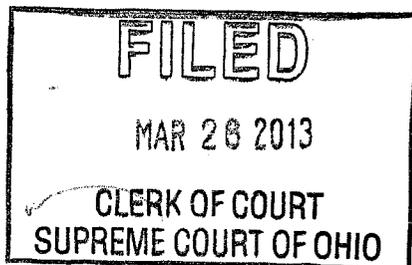
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I. STATEMENT OF AMICI INTEREST

Now come Amicus Curae the Ohio Public Employees Lawyers Association (OPELA), Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Ohio Nurses Association (ONA) /AFT, AFL-CIO, Ohio Association of Professional Fire Fighters (OAPFF), Fraternal Order of Police of Ohio, Incorporated (F.O.P.), and SEIU District 1199, the Health Care and Social Service Union, SEIU, CTW (SEIU District 1199), and hereby submit their Amicus Brief in support of Appellee Mahoning Education Association of Developmental Disabilities. (Collectively these Amici will be referred to as Employee Amici). Because this case is a case of significant interest and whose outcome may impact the integrity of public sector employee organizations and their members throughout the State of Ohio, these organizations submit this Brief of Amicus Curiae in support of Appellee.

OPELA is a professional organization whose membership includes in-house and outside counsel of employee organizations throughout the State of Ohio.

The Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO represents approximately 38,000 employees of public schools, public libraries, Head Start agencies, boards of developmental disabilities, community and technical colleges, and residential care facilities in approximately 480 locals throughout the State of Ohio. OAPSE/AFSCME protects the interests of its members who serve Ohio's school children, and community and technical college students, those in early childhood education programs, children and adults with special needs and those who take advantage of the public libraries and other community services.

Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO is a labor organization that represents approximately 40,000 public and not-for-profit

private sector employees in approximately 400 bargaining units across the State of Ohio. Among the public sector employees that the Ohio Council 8 represents are municipal, county, township, university, public hospital and public school employees. Ohio Council 8, AFSCME, AFL-CIO protects the interests of its public employee members by bargaining collectively with public employers over the wages, hours and other terms and conditions of their employment in accordance with O.R.C. Chapter 4117.

The Ohio Nurses Association (ONA) /AFT, AFL-CIO represents approximately 9,500 registered nurses throughout the State of Ohio. ONA protects the interests of its members who serve members of Ohio communities in institutions of higher education, hospitals, boards of health, clinics, visiting nurse and hospice organizations, and any other setting where healthcare is delivered.

The Ohio Association of Professional Fire Fighters (OAPFF) is dedicated to serving more than 10,000 fire fighters and paramedics throughout the State of Ohio. OAPFF serves its individual members and the various local organizations that represent them by providing educational resources on Chapter 4117 of the Revised Code and assisting local organizations in negotiations, grievance administration, and all aspects of collective bargaining. OAPFF seeks to assure that members are free to exercise the rights guaranteed to them by Chapter 4117 and by other relevant provisions, such as the United States Constitution or other chapters of the Ohio Revised Code.

SEIU District 1199, the Health Care and Social Service Union, SEIU, CTW (SEIU District 1199) represents over 30,000 bargaining unit workers, including thousands of public employees in the State of Ohio that are subject to the jurisdiction of SERB.

The membership of the Fraternal Order of Police of Ohio, Incorporated consists of over 25,000 law enforcement officers and retirees in the State of Ohio. The F.O.P. is dedicated to the

representation of its membership for a multitude of purposes. The decision of the Court in this case can have a significant impact on members of the F.O.P. and Police Officers currently represented by F.O.P. affiliates throughout the State of Ohio.

The Employee Amici believe that the statute in question unconstitutionally restricts the rights of public employees to exercise their First Amendment rights on labor related issues of critical importance to public employees and the public they serve.

II. STATEMENT OF FACTS

Employee Amici agree with the statement of facts given in the Appellee's Brief and hereby incorporate said Statement of Facts as if fully rewritten herein.

III. LAW AND ARGUMENT

In addition to the arguments set forth below, Employee Amici hereby incorporate the arguments set forth in Part III., Law and Argument, of Appellee's Brief, as if fully rewritten herein.

Proposition of Law: R.C. 4117.11(B)(8) is unconstitutional, on its face and as applied, under the First Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment, and under Section 11, Article I, Ohio Constitution.

A. R.C. 4117.11(B)(8) is a content-based regulation that is subject to strict scrutiny.

A law is content-based if it regulates speech based on its subject-matter. R.C. 4117.11(B)(8), by its very terms, applies to only one subject—labor speech. That statute makes it an unfair labor practice for a public employee organization, its agents, or representatives, or public employees to “...engage in any picketing, striking, or other concerted refusal to work

without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action.”

Laws which regulate speech based on subject-matter are concerned about content and are not neutral time, place or manner restrictions. See *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 99, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972), quoting, Kalven, *The Concept of the Public Forum: Cox v. Louisiana*, 1965 Sup.Ct.Rev. 1, 29. See, also, *Consolidated Edison Co. of New York, Inc. v. Public Serv. Comm. of New York*, 447 U.S. 530, 536, 100 S.Ct. 2326, 65 L.Ed.2d 319.

The 8th District Court of Appeals has found that R.C. 4117.11(B)(8) applies only to labor picketing and is, therefore, a subject-matter based regulation. *United Electrical, Radio & Machine Workers of Am. v. State Emp. Relations Bd.*, 126 Ohio App.3d 345, 710 N.E.2d 358 (8th Dist. 1998). In addition, the State Employment Relations Board’s enforcement of R.C. 4117.11(B)(8) shows that it imposes a subject-matter based regulation on speech because SERB has held that it applies only to picketing related to labor issues. See *In re University of Akron*, SERB 86-010 (March 14, 1986).

While the Appellants and their Amici assert that the notice requirement which applies only to labor organizations is not a content based restriction, the arguments set forth in the briefs of Amici in support of Appellants demonstrate to the contrary. Appellant Amici assert in their briefs that they are concerned about pickets disseminating misinformation and creating confusion. This argument is clearly addressed to the content of the speech in question.

Appellant Amici assert that, with notice, an employer can alert the public to its continued operation and explain its response to the pickets. In part V.D. of Amici Ohio Public Employer Relations Association’s brief Amici again express concern about possible misinformation

provided by the picketers. These Amici argue that “with advance notice, the public employer has the opportunity to address information by providing the factual position of the employer for the public to consider.” These arguments make it clear that what the public employers hope to derive from the ten day notice requirement is the ability to get their story out to the public first, before information can be disseminated by picketers. This certainly demonstrates that the notice requirement is a content-based restriction which provides the public employer with the opportunity to get its message published prior to that of the labor organization. There are, however, no statutes which place any time or notice restrictions on the dissemination of information by public employers. This ten day notice requirement therefore gives public employers a distinct advantage in competing in the marketplace of ideas protected by the First Amendment.

As Appellant State Employment Relations Board (SERB) has noted, the case of *Turner Broadcasting system, Inc. v. FCC*, 512 US 622 (1994) upheld a law which distinguished between speakers in the television programming department, but was “...based only upon the manner in which speakers transmitted their messages...not upon the messages they carry”. *Id.* at 643. However, the court further noted that such restrictions are permissible “[s]o long as they are not a subtle means of exercising a content preference...” *Id.* The fact that the advance notice picketing requirement gives public employers the opportunity to always get their message out prior to the picketers certainly constitutes a means of exercising content preference.

Appellant SERB’s brief notes that the First Amendment protects individuals from disfavored speaker laws because they “are all too often simply a means to control content” *Citizens United v. FEC*, 130S. Ct. 876 (2010), and that the disfavored speaker doctrine is another way for courts to ferret out viewpoint-based regulations intended to push the disfavored view out

of the marketplace of ideas. However, SERB incorrectly argues that the picketing notice requirement is incapable of pushing viewpoints out of the marketplace of ideas.

R.C. 4117.11(B)(8), SERB argues, cannot be said to disfavor a particular speaker because it allows that speaker to say *whatever she wishes at any time*. However, that is clearly not the case. The law only allows the speaker to say what she wishes *after* providing ten days notice and *after* giving the public employer the opportunity to convey its message to the target audience first.

B. R.C. 4117.11(B)(8) is a prior restraint, subject to strict scrutiny and is not a valid time, place and manner restriction.

R.C. 4117.11(B)(8) makes it unlawful for a public employee organization and public employees to engage in labor picketing unless they comply with the legislatively imposed condition of providing ten days' notice to SERB and the employer. That condition is enforced through R.C. Chapter 4117's unfair labor practice charge mechanism. R.C. 4117.11(B)(8) is therefore a prior restraint.

Courts have found laws requiring a party to provide a government official with advanced notice of speech activities are prior restraints. *See, N.A.A.C.P. v. City of Richmond*, 743 F.2d 1346 (9th Cir.1984).

In order to be a valid time, place, or manner restriction, a law must be subject-matter neutral, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of information. *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). Even if R.C. 4117.11(B)(8) were subject-matter neutral, it is not narrowly tailored; does not serve significant governmental interest; and does not leave open ample alternative channels for communication of information.

Appellants assert that the advance notice picketing requirement imposes no restriction on

the message of the picketers, but only a time, place and manner restriction on the speech. However, there are instances where the advance notice picketing requirement results in an absolute ban on picketing activity. First of all, no picketing at all may occur less than ten days prior to the filing of a picketing notice. In addition, while labor organizations may normally have more than ten days notice of a regularly scheduled meeting of a public body, public bodies are permitted to hold special meetings on as little as twenty-four hours advance notice. See R.C. 121.22 (F). Requiring an employee organization to provide ten days notice prior to a special meeting effectively bans all picketing by employee organizations at special meetings held with less than ten days notice. In addition, there is nothing to prevent a public body from modifying its agenda or adding agenda items to the agenda of its regularly scheduled meetings within ten days of the meeting date. Therefore, if an employee organization wishes to picket at a meeting where a particular agenda item was to be considered, it would effectively be banned from picketing if the agenda item were added within ten days of the meeting date.

Employee Amici represent tens of thousands of public employees throughout the state of Ohio in a wide variety of occupations: Education, Law Enforcement, and Firefighting to name a few. Public employees work in schools, hospitals, prisons, Department Youth Services facilities, on highways and many other locations. Employee Amici deal on a regular basis with a myriad of issues affecting not just wages and benefits, but working conditions and safety. There are times when matters, such as safety issues, need to be brought to the attention of a public employer and the public. However, despite the guarantees of the U.S. and Ohio Constitution that employees and their organizations may bring these matters to the public attention, the Ohio Legislature has pre-determined that there will never be an issue which cannot wait at least ten days to be brought to the public forum through lawful picketing.

No such bans or restrictions exist for any persons or organizations other than public employee organizations and no such bans exist for any picketing other than picketing related to labor issues.

C. R.C. 4117.11(B)(8) does not serve a significant or compelling governmental interest.

1. Absence of the ten day picketing notice requirement would not cause a disruption of public services.

The record in this case contains no evidence of any compelling interest served by the ten day notice requirement. Appellants argue that the picketing notice requirement serves to protect the government interest of maintaining the continued delivery of necessary public services. SERB and Amici in support of Appellant set forth a parade of horrors involving the interruption or disruption of the continued delivery of necessary public services which they allege would occur in the absence of a requirement of a ten day notice prior to picketing. However, these assertions are based upon sheer speculation. The instant case involved no disruption or interruption of public services, no interference with access or egress to the facility and none of the problems about which Appellants and their Amici allege to be so concerned. Moreover, virtually all of the alleged concerns of Appellants have far more to do with work strikes and work stoppages than informational picketing.

It is apparent that other states are able to function without the dire consequences predicted by Appellants despite the fact that they have no requirement of notice prior picketing. Ohio is the only state which imposes a requirement that a labor organization provide a notice of its intent to picket some period of time prior to commencing the picketing. There are numerous states which have laws that address the issue of collective bargaining and strikes by public

employee unions. Some of those laws contain requirements for providing notice prior to commencement of a strike or work stoppage. See for example: Alaska Stat. 23.40.200(g)(2) (72 hour strike notice for school employees); 115 ILCS 5/13 (Illinois statute requiring 10 day strike notice for educational employees); Minn. St. 179A.18 (Subdivision 3) (10 day strike notice for non-teaching employees). However, Employee Amici have been unable to locate even one state statute outside of the state of Ohio which requires notice prior to picketing. Apparently those states have been able to continue to function without the disastrous deprivation of public services about which Appellants allege to be so concerned. Appellants offered no evidence of any case from any other state in which the lack of a picketing notice requirement resulted in any interruption in the continued delivery of necessary public services.

Moreover, Ohio's Eighth District court of appeals declared the advanced picketing notice requirement of RC 4117.11(B)(8) to be unconstitutional in 1998. Thus, the public employers and labor organizations in Cuyahoga County had been operating without a requirement for advance notice of picketing for more than a decade at the time this matter went before the state employee relations board. Once again, no evidence was offered of any circumstance in which the lack of an advance picketing notice requirement had resulted in any interruption in the continued delivery of necessary public services in Cuyahoga County.

Likewise, Appellant and its supporting Amici have cited not one federal statute other than 29 U.S.C. Section 158(g) which requires a notice prior to picketing. 29 U.S.C. Section 158(g) does require a ten day notice prior to picketing. However, the statute applies only to healthcare institutions. Thus, the vast majority of private sector labor organizations are not subject to any advance to picketing notice requirement.

The instant case involved peaceful picketing with no interference with access to or egress

from the facility. Appellants' and their Amicis' wild speculation of what might occur in the event of picketing does not justify this substantial interference with public employees' First Amendment Rights.

If actual problems arise as a result of picketing there are adequate means available to address those problems. For example, where a public employer's concerns regarding interference with ingress or egress to a facility or interruption in the delivery of public services are real, there are other means available to deal with these issues. Ohio courts have the ability to issue injunctive relief in the form of temporary restraining orders, preliminary injunctions, and permanent injunctions to deal with such issues. See for example: *Marlite Div. Masonite Corp. v. United Papermakers & Paper Worker*, 42 Ohio Op. 2d 19, 1967 Ohio Misc. LEXIS 479 (Tuscarawas County 1967) where the court found that the union members were engaged in a lawful strike but issued a temporary injunction limiting the union to three pickets at a time to any entrance point, enjoining pickets from in any manner blocking or impeding free access and egress and enjoining any other unlawful acts. Unlawful activities on a picket line may be enjoined, as "the right to picket is not absolute" but instead must be ". . . asserted within the limits of not unreasonably interfering with the rights of others . . ." *Superior Savings Ass'n v. Cleveland Council of Unemployed Workers*, 27 Ohio App.3d 344, 346 (8th Dist. 1986) (quoting *Kelly v. Page*, 335 F.2d 114, 199 (5th Cir. 1964)); See also *Miller-Valentine Const. v. Iron Workers Local Union No. 55*, 138 Ohio App. 3d 134, 137 (6th Dist. 2000). Not only is such relief available, but it is available almost immediately if necessary and legally justified. A Temporary Restraining Order can be issued almost immediately and can even be issued *ex parte*, if necessary. Ohio Civ. R. 65(A).

Should any of the issues about which Appellants and their Amici purport to be concerned

arise, judicial relief would be available to deal with the actual problems occurring at the site in question. If the number of picketers creates a problem, the court can limit the number of picketers. If the location of picketers interferes with the operation of the facility, the location can be restricted. If the conduct of the picketers is not peaceful, that conduct can be addressed through injunctive relief and or criminal charges. The speculation that such issues may arise in a situation involving informational picketing having nothing to do with a work stoppage does not justify a blanket prohibition against any picketing which occurs without providing a ten day advance notice.

Moreover, the ten day notice does nothing to enable public employers to deal with many of Appellants' alleged concerns in advance. Appellants and their supporting Amici assert that the ten day notice provides them with the opportunity to deal with anticipated problems in advance of the picketing. However, many of the alleged concerns cited by appellants involve circumstances of which the public employer would not be aware until after the picketing has commenced. The public employer would therefore not be able to deal with these issues in advance after having received a ten day picket notification. For example, Amicus Ohio Public Employer Labor Relations Association asserts that the number of picketers could be "a few people or hundreds." A ten day notice would not provide any information regarding the number of picketers. Therefore the public employer would not be aware of whether the number of picketers would create a problem until after the picketing had commenced.

Appellant Amici acknowledge that some pickets may be small, but argue that others "can be large with numerous employees, or non-employees, participating." Amici also argue that unannounced or "flash" picketing could occur "at any time on any day, and be staffed with individuals who are not public employees." However, these arguments provide no justification

for the ten day notice requirement. No statute requires that individuals who are not public employees provide notice prior to picketing.

Finally, Amici argue that removal of the notice requirement would hinder the employer's ability to respond to misinformation. What is not explained is how an employer would know that pickets were going to distribute "misinformation" before the picketing even begins. Again, what Appellants and their Amici really assert is that, on any issue on which picketing may occur, the public employer must have the opportunity to anticipate the employees' message and to get its message out first. This clearly constitutes a prior restraint for an improper reason.

Amici Ohio Public Employer Labor Relations Association goes so far as to argue that such "misinformation" can result in loss of current and future clients and, in turn, a "loss of business and revenue." Appellants and their Amici describe these scenarios as if they will involve picketing which will occur over a long period of time and that, once picketing begins, the employer will have no opportunity to respond to the message of the picketers or to any problems perceived to be caused by the picketers. Obviously this is not the case. Employers can respond as soon and as often as they like to any perceived misinformation. They can seek immediate injunctive relief if they perceive that pickets are improperly interfering with the delivery of public services.

Speculation that pickets might be numerous, that they might provide misinformation or that persons who are not public employees might engage in "flash" picketing do not justify the restriction on First Amendment rights imposed by the statute in question. It is clear that the arguments set forth in support of the alleged need for the ten day notice describe situations that are not necessary to preserve the continued timely delivery of public services, but rather are a rationalization for the continued enforcement of a provision which constitutes a prior restraint on

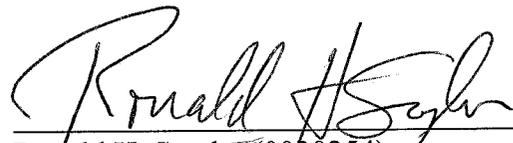
freedom of speech.

IV. CONCLUSION

For all the foregoing reasons, it is respectfully submitted that R.C. 4117.08(B)(8) violates the First Amendment of the U.S. Constitution and Article I, Section 11 of the Ohio Constitution. The issue involved in the instant action is picketing, not a strike or work stoppage. There is no basis for the assertions of Appellants and their supporting Amici that the lack of a ten day picketing notice will result in any deprivation or disruption of services.

The judgment of the Seventh District Court of Appeals should be affirmed.

Respectfully submitted,



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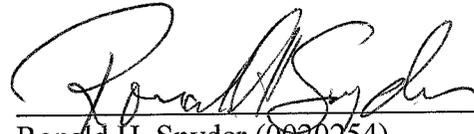
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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2013, a copy of the foregoing was served by regular U.S. Mail, postage pre-paid, upon: Ira J. Mirkin, Charles W. Oldfield, Green, Haines, Sgambati Co., LPA, P.O. Box 849 Youngstown, Ohio 44501-0849; Eugene P. Nevada, Clemons, Nelson & Associates, Inc., 6500 Emerald Parkway, Suite 100, Dublin, Ohio 43016; Michael DeWine, Attorney General of Ohio, Alexandra T. Schimmer, Solicitor General, Stephen P. Carney, Deputy Solicitor, Lori J. Weisman, Michael D. Allen, Assistant Attorneys General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215.

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APPENDIX

Alaska Stat. § 23.40.200

Current through the 2012 Regular Session and the Third Special Session of the Twenty-Seventh State Legislature Annotations current through opinions posted on Lexis.com as of January 2, 2013.

Alaska Statutes > TITLE 23. > CHAPTER 40. > ARTICLE 2.

Sec. 23.40.200. Classes of public employees; arbitration

- (a) For purposes of this section, public employees are employed to perform services in one of the three following classes:
- (1) those services which may not be given up for even the shortest period of time;
 - (2) those services which may be interrupted for a limited period but not for an indefinite period of time; and
 - (3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.
- (b) The class in (a)(1) of this section is composed of police and fire protection employees, jail, prison, and other correctional institution employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order that may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030 or 09.43.480 to the extent permitted by AS 09.43.010 and 09.43.300.
- (c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation, and educational institution employees other than employees of a school district, a regional educational attendance area, or a state boarding school. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety, or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety, or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the effect of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030 or 09.43.480 to the extent permitted by AS 09.43.010 and 09.43.300.
- (d) The class in (a)(3) of this section includes all other public employees who are not included in the classes in (a)(1) or (2) of this section. Subject to (g) of this section, employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.
- (e) Notwithstanding the provisions of (b), (c) and (d) of this section, the employees with the concurrence of the employer may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.
- (f) The parties to a collective bargaining agreement may provide in the agreement a contract

for arbitration to be conducted solely according to AS 09.43.010 -- 09.43.180 (Uniform Arbitration Act) or AS 09.43.300 -- 09.43.595 (Revised Uniform Arbitration Act) to the extent permitted by AS 09.43.010 and 09.43.300 if either Act is incorporated into the agreement or contract by reference.

- (g) Under the provisions of (d) of this section, if an impasse or deadlock is reached in collective bargaining negotiations between a municipal school district, a regional educational attendance area, or a state boarding school and its employees,
- (1) the parties shall submit to advisory arbitration before the employees may vote to engage in a strike; the arbitrator shall
 - (A) be a member of the American Arbitration Association, Panel of Labor Arbitrators, or the Federal Mediation and Conciliation Service;
 - (B) have knowledge of and recent experience in the local conditions in the school district, regional educational attendance area, or state boarding school; and
 - (C) be determined from a list containing at least five nominees who meet the qualifications of this subsection; this list shall be considered a complete list for the purpose of striking names and selecting the arbitrator;
 - (2) if, under (1) of this subsection, advisory arbitration fails, a strike may not begin until at least 72 hours after notice of the strike is given to the other party; in any event, a strike may not begin on or after the first day of the school term, as that term is described in AS 14.03.030, unless at least one day in session with students in attendance has passed after notice of the strike is given by the employees to the other party.

History

(§ 2 ch 113 SLA 1972; am §§ 3, 4 ch 1 SLA 1992; am §§ 17, 18 ch 113 SLA 1997; am §§ 1, 2 ch 130 SLA 2003; am §§ 5 -- 7 ch 170 SLA 2004)

ALASKA STATUTES

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Minn. Stat. § 179A.18

This document is current through the 2012 Regular Session and 2012 Special Sessions Annotations are current through October 10, 2012

Minnesota Statutes > LABOR, INDUSTRY > CHAPTER 179A.

179A.18 STRIKES AUTHORIZED

Subdivision 1. *When authorized.* -- Essential employees may not strike. Except as otherwise provided by subdivision 2 and section 179A.17, subdivision 2, other public employees may strike only under the following circumstances:

- (i) the collective bargaining agreement between their exclusive representative and their employer has expired or, if there is no agreement, impasse under section 179A.17, subdivision 2, has occurred; and
- (ii) the exclusive representative and the employer have participated in mediation over a period of at least 45 days, provided that the mediation period established by section 179A.17, subdivision 2, governs negotiations under that section, and provided that for the purposes of this subclause the mediation period commences on the day following receipt by the commissioner of a request for mediation; or
- (2) the employer violates section 179A.13, subdivision 2, clause (9); or
- (3) in the case of state employees, (i) the Legislative Coordinating Commission has rejected a negotiated agreement or arbitration decision during a legislative interim; or (ii) the entire legislature rejects or fails to ratify a negotiated agreement or arbitration decision, which has been approved during a legislative interim by the Legislative Coordinating Commission, at a special legislative session called to consider it, or at its next regular legislative session, whichever occurs first.

Subd. 2. *School district requirements.* -- Except as otherwise provided by section 179A.17, subdivision 1, teachers employed by a local school district, other than principals and assistant principals, may strike only under the following circumstances:

- (i) the collective bargaining agreement between their exclusive representative and their employer has expired or, if there is no agreement, impasse under section 179A.17, subdivision 1, has occurred; and
- (ii) the exclusive representative and the employer have participated in mediation over a period of at least 30 days. For the purposes of this subclause the mediation period commences on the day that a mediator designated by the commissioner first attends a conference with the parties to negotiate the issues not agreed upon; and
- (iii) neither party has requested interest arbitration or a request for binding interest arbitration has been rejected; or
- (2) the employer violates section 179A.13, subdivision 2, clause (9).

Subd. 3. *Notice.* -- In addition to the other requirements of this section, no employee may strike unless written notification of intent to strike is served on the employer and the commissioner by the exclusive representative at least ten days prior to the commencement of the strike. For all employees other than teachers, if more than 30 days have expired after service of a notification of intent to strike, no strike may commence until ten days after service of a new written notification. For teachers, no strike may commence more than 25 days after service of notification of intent to strike unless, before the end of the 25-day period,

the exclusive representative and the employer agree that the period during which a strike may commence shall be extended for an additional period not to exceed five days. Teachers are limited to one notice of intent to strike for each contract negotiation period, provided, however, that a strike notice may be renewed for an additional ten days, the first five of which shall be a notice period during which no strike may occur, if the following conditions have been satisfied:

- (1) an original notice was provided pursuant to this section; and
- (2) a tentative agreement to resolve the dispute was reached during the original strike notice period; and
- (3) such tentative agreement was rejected by either party during or after the original strike notice period.

The first day of the renewed strike notice period shall commence on the day following the expiration of the previous strike notice period or the day following the rejection of the tentative agreement, whichever is later. Notification of intent to strike under subdivisions 1, clause (1); and 2, clause (1), may not be served until the collective bargaining agreement has expired, or if there is no agreement, on or after the date impasse under section 179A.17 has occurred.

History

1984 c 462 s 19; 1985 c 157 s 7,8; 1987 c 186 s 15; 1992 c 582 s 20; 1994 c 560 art 2 s 19; 2000 c 501 s 5

Minnesota Statutes

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115 ILCS 5/13

Statutes current through Public Act 97-1170 of the 2012 Legislative Session and Public Act 98-4 of the 2013 Legislative Session Annotations current to State Cases through January 28, 2013

Illinois Compiled Statutes Annotated > CHAPTER 115. > ILLINOIS EDUCATIONAL LABOR RELATIONS ACT

§ 115 ILCS 5/13. Strikes

Sec. 13. Strikes. (a) Notwithstanding the existence of any other provision in this Act or other law, educational employees employed in school districts organized under Article 34 of the School Code [105 ILCS 5/34-1 et seq.] shall not engage in a strike at any time during the 18 month period that commences on the effective date of this amendatory Act of 1995. An educational employee employed in a school district organized under Article 34 of the School Code who participates in a strike in violation of this Section is subject to discipline by the employer. In addition, no educational employer organized under Article 34 of the School Code may pay or cause to be paid to an educational employee who participates in a strike in violation of this subsection any wages or other compensation for any period during which an educational employee participates in the strike, except for wages or compensation earned before participation in the strike. Notwithstanding the existence of any other provision in this Act or other law, during the 18-month period that strikes are prohibited under this subsection nothing in this subsection shall be construed to require an educational employer to submit to a binding dispute resolution process.

(b) Notwithstanding the existence of any other provision in this Act or any other law, educational employees other than those employed in a school district organized under Article 34 of the School Code and, after the expiration of the 18 month period that commences on the effective date of this amendatory Act of 1995, educational employees in a school district organized under Article 34 of the School Code shall not engage in a strike except under the following conditions:

- (1) they are represented by an exclusive bargaining representative;
- (2) mediation has been used without success and, if an impasse has been declared under subsection (a-5) of Section 12 of this Act [115 ILCS 5/12], at least 14 days have elapsed after the mediator has made public the final offers;
- (2.5) if fact-finding was invoked pursuant to subsection (a-10) of Section 12 of this Act, at least 30 days have elapsed after a fact-finding report has been released for public information;
- (2.10) for educational employees employed in a school district organized under Article 34 of the School Code, at least three-fourths of all bargaining unit employees who are members of the exclusive bargaining representative have affirmatively voted to authorize the strike; provided, however, that all members of the exclusive bargaining representative at the time of a strike authorization vote shall be eligible to vote;
- (3) at least 10 days have elapsed after a notice of intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional superintendent and the Illinois Educational Labor Relations Board;
- (4) the collective bargaining agreement between the educational employer and educational employees, if any, has expired or been terminated; and

- (5) the employer and the exclusive bargaining representative have not mutually submitted the unresolved issues to arbitration.

If, however, in the opinion of an employer the strike is or has become a clear and present danger to the health or safety of the public, the employer may initiate in the circuit court of the county in which such danger exists an action for relief which may include, but is not limited to, injunction. The court may grant appropriate relief upon the finding that such clear and present danger exists. An unfair practice or other evidence of lack of clean hands by the educational employer is a defense to such action. Except as provided for in this paragraph, the jurisdiction of the court under this Section is limited by the Labor Dispute Act [820 ILCS 5/1 et seq.].

History

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 48, para. 1713]

Source:

P.A. 83-1014; 89-15, § 10; 90-548, § 5-920; 97-7, § 5; 97-8, § 10.

NOTE.

This section was Ill.Rev.Stat., Ch. 48, para. 1713.

The introductory language of Section 5 of P.A. 97-7 provided: "If and only if Senate Bill 7 as passed by the 97th General Assembly becomes law, the Illinois Educational Labor Relations Act is amended by changing Sections 4.5, 12, and 13 as follows". Senate Bill 7 (P.A. 97-8) became effective June 13, 2011.

ILLINOIS COMPILED STATUTES ANNOTATED

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