

NOTICE OF PUBLIC SCHOOL EMPLOYEES PRESUMED TO BE ON STRIKE

FREQUENTLY ASKED QUESTIONS

Q: I was served with a NOTICE OF PUBLIC SCHOOL EMPLOYEES PRESUMED TO BE ON STRIKE. Why did I receive this document?

A: After a public hearing, the Michigan Employment Relations Commission has determined that a strike by one or more employees has occurred in violation of Section 2 of the Public Employment Relations Act, MCL 423.202. You are presumed to have participated in the strike, either by being absent from work without the permission of your employer or abstaining from the full performance of your normal duties without permission on a date when the strike is presumed to have occurred.

Q: Do I have to respond to the Notice?

A: You may challenge the presumption by filing an answer and a sworn affidavit, supported by available documentary proof, containing a clear and concise statement of the facts which you believe demonstrates that you did not participate in an unlawful strike. The answer must be filed on a Commission form, a copy of which is available at the Michigan Employment Relations Commission website: www.michigan.gov/merc. The answer, affidavit and accompanying documentation must be filed with the Commission within ten (10) days from the date the Notice of Public School Employees Presumed to be On Strike was served or mailed to you. At the same time, you must serve a copy of your answer, the affidavit and attachments on your employer or the superintendent of public instruction. See the Answer form for additional instructions.

Q: What if I do not file a timely response to the Notice of Public School Employees Presumed to be On Strike?

A: Pursuant to the statute, your employer is required to deduct from your annual salary an amount equal to one day of pay for each full or partial day that you engaged in the strike. This amount is in addition to any loss of pay attributable to your absence from work any other penalty prescribed by law.

Q: If I do file a timely response to the Notice of Public School Employees Presumed to be On Strike, what happens next?

A: The Michigan Administrative Hearing System will schedule an evidentiary hearing and provide you with notice of the date, time and location for the hearing. By law, the hearing must commence within fifteen (15) days from the date the Commission received your answer, affidavit and accompanying documentation.

Q: Who will hear my case?

A: Your case will likely be heard by an Administrative Law Judge employed by the Michigan Administrative Hearing System, acting on the Commission's behalf.

Q: Do I have the right to be represented by a lawyer at the hearing? Can I be represented by someone who is not a lawyer?

A: You have the right to represent yourself or, if you prefer, you can be represented by a lawyer or any other individual.

Q: What happens at the hearing?

A: The hearing will be less formal than, but similar to, a court proceeding. Usually, the parties are allowed to make opening statements to the Administrative Law Judge. You will then be given the opportunity to offer evidence to rebut the presumption that you engaged in an unlawful strike. You may testify yourself, call witnesses to testify and offer documentary exhibits. Your employer or the superintendent of public instruction will have the opportunity to question your witnesses or object to your exhibits and the Administrative Law Judge may also ask questions. After you have completed your case, your employer or the superintendent of public instruction may offer their own witnesses and exhibits. You will have the opportunity to question witnesses who testify against you and to object to exhibits. When the parties have finished offering evidence, they may be allowed to make a closing statement to the Administrative Law Judge or be given the opportunity to file written briefs.

Q: How should I prepare for the hearing?

A: If you intend to introduce documentary exhibits, you must bring at least two (2) extra copies of each proposed exhibit with you to the hearing. If you need to compel the presence of a witness or the production of evidence, a subpoena form may be obtained by calling the Michigan Administrative Hearing System at (313) 456-2713.

Q: What happens after the hearing?

A: The Administrative Law Judge will review the evidence and determine whether you engaged in a strike in violation of Section 2 of the Public Employment Relations Act, MCL 423.202. You will be served with a copy of the written decision and recommended order of the Administrative Law Judge. If the Administrative Law Judge determines that you engaged in a strike, you will be ordered to cease and desist from the unlawful conduct and your employer will be required to deduct from your annual salary an amount equal to one day of pay for each full or partial day that you engaged in the strike. This amount is in addition to any loss of pay attributable to your absence from work any other penalty prescribed by law.

Q: Can I appeal the decision of the Administrative Law Judge?

A: Any party may appeal the decision of the Administrative Law Judge by filing Exceptions with the Michigan Employment Relations Commission. Instructions regarding the appeal process will be provided when you receive a copy of the Administrative Law Judge's decision.

Q: How can I get additional information about this process?

A: Copies of the Public Employment Relations Act and the General Rules and Regulations of the Michigan Employment Relations Commission are available for download at the Michigan Employment Relations Commission website: www.michigan.gov/merc. You may also call the Michigan Administrative Hearing System at (313) 456-2700. We cannot give you legal advice, but can tell you the status of your case and assist you with procedural questions.