



H.B. 155

125th General Assembly
(As Introduced)

Rep. Brinkman

BILL SUMMARY

- Makes various changes to the Public Employee Collective Bargaining Law as follows:
 - Gives public employees the right to refuse representation by an exclusive representative.
 - Forbids public employers to require membership with, payments to, or, for agricultural labor, referrals from, an exclusive representative as a condition of employment.
 - Forbids either a public or private employer to deduct fees, dues, assessments, or charges of any kind from an employee's wages without a written and signed authorization from the employee.
 - Abolishes the provision creating a public employer's right to include a provision in a collective bargaining agreement requiring the payment of fair share fees and contributions in lieu of fair share fees.
 - Specifies that any agreement that purports to require public employees to join or to pay money to an exclusive representative, or that violates the Public Employees' Collective Bargaining Law, is void and unenforceable.
 - Expands the list of unfair labor practices of a public employer.
- Specifies conduct in which a private sector employer must not engage.
- Specifies that any agreement, understanding, or practice that violates provisions concerning the rights of private employees to bargain collectively is void and unenforceable.

- Specifies that any agreement in contravention of provisions concerning the rights of private employees to bargain collectively is void and unenforceable.
- Creates a cause of action for anyone injured by a violation of the provisions related to the right of private employees to bargain collectively.
- Establishes a penalty for violations of the provisions related to the right of private employees to engage in collective bargaining.
- Creates and requires the posting and distribution of an "Employees' Freedom of Choice" notice.

CONTENT AND OPERATION

Background

Collective bargaining involves an employer and employees reaching an agreement with respect to rates of pay, wages, hours of employment, or other conditions of employment. Collective bargaining in the public sector is governed by the Public Employees' Collective Bargaining Law (R.C. Chapter 4117.). Collective bargaining in the private sector, with certain exceptions, is governed by the National Labor Relations Act (NLRA) 29 U.S.C.A. §§ 151 et seq.

Public sector

Public employees' rights

The Public Employees' Collective Bargaining Law generally governs the state and its political subdivisions and employees who work for the state and its political subdivisions, subject to certain exceptions (sec. 4117.01). Under current law, public employees have the right to form, join, assist, or participate or to refrain from forming, joining, assisting, or participating in any employee organization, except with respect to payment of fair share fees or fees in lieu of those (see "Elimination of fair share fee and nonreligious charitable fund payment requirement" below) (sec. 4117.03). The bill specifically grants public employees' the right to refrain from engaging in other concerted activities for the purpose of collective bargaining and the right to refuse any representation by an exclusive representative or employee organization (sec. 4117.03(A)).

Current law sets forth the procedure that an employee organization must follow to become an exclusive representative of all employees in a bargaining

unit. The bill specifies that nothing in the procedure by which an employee organization becomes an exclusive representative can infringe upon a right given to an individual public employee under the Public Employees' Collective Bargaining Law. (Sec. 4117.05.)

Authorization to make certain deductions from wages

In any collective bargaining agreement, current law requires that the agreement must contain a provision that provides for a grievance procedure, and a provision that authorizes a public employer to deduct periodic dues, initiation fees, and assessments upon presentation of a written deduction authorization by the employee (sec. 4117.09(B)). Instead of leaving this up to the collective bargaining agreement provisions, the bill specifies that public employees have the right to authorize their public employers to deduct dues, fees, or other charges from their wages. The bill requires the authorization to be in writing and signed by the employee (sec. 4117.03(A)(7)). The bill also requires that every public employer who receives such an authorization from an employee must promptly notify the employee in writing that the employee may revoke the authorization at any time by providing written notice of the revocation. The revocation becomes effective 30 days after the public employer receives it (sec. 4117.03(D)).

Public employers' prohibited activities

The bill prohibits a public employer from doing any of the following:

(1) Requiring any person, as a condition of employment or of the continuation of employment, to become or to remain a member of any exclusive representative;

(2) Requiring any person, as a condition of employment or of the continuation of employment, to pay any dues, fees, assessments, or other charges of any kind, including fair share fees, to an exclusive representative unless the person is a member of that exclusive representative;

(3) Requiring any person engaged in agricultural labor to be referred, recommended, or approved by an exclusive representative as a condition of employment or of the continuation of employment;

(4) Deducting from the wages, earnings, or compensation of any public employee any dues, fees, assessments, or other charges of any kind, including fair share fees, to be held for or paid over to an exclusive representative unless the public employer first receives the required written and signed authorization for those deductions. (Sec. 4117.031.)

The Employees' Freedom of Choice notice

The bill requires every public employer to post and to continuously display a notice entitled, "Employees' Freedom of Choice" in a conspicuous place. Each public employer also must give a copy of the notice to each new employee at hiring and when an employee's employment status changes. (Sec. 4117.081.)

The "Employees' Freedom of Choice" notice reads as follows:

"Under Ohio law, public employees are protected in choosing whether to join or to refrain from joining exclusive union representatives. It is unlawful for a public employer and an exclusive representative to enter into a contract or agreement that requires employees to pay dues, fees, assessments, or other charges of any kind as a condition of obtaining or keeping a job. Under the law, a public employer is prohibited from discharging or otherwise discriminating against an employee because that employee joins an exclusive representative or refuses to join or pay dues or other charges to an exclusive representative. This notice is posted pursuant to section 4117.081 of the Revised Code." (Sec. 4117.081.)

Elimination of fair share fee and nonreligious charitable fund payment requirement

Current law requires that parties to a collective bargaining agreement reduce the agreement to writing and that it be executed by both parties. The agreement may contain a provision requiring employees who are not members of the employee organization to pay a fair share fee.¹ Following a mutually agreed upon probationary period, or 60 days from the date of employment or the effective date of a collective bargaining agreement, the fair share fee is automatically deducted from the employees' payroll check and no written authorization is required. (Sec. 4117.09(C).)

Under current law, the payment of a fair share fee does not require any employee to become a member of the employee organization. Also, a rebate procedure exists to provide a rebate of expenditures in support of partisan politics or ideological causes not germane to the work of employee organizations in the realm of collective bargaining, provided that the public employee makes a timely demand on the employee organization for a rebate. A determination on the disposition of the rebate is conclusive unless it is arbitrary and capricious. The public employee may appeal a determination regarding rebates to the State

¹ Fair share fees represent a fee paid by nonunion members to cover the cost of representation of the nonunion member by the union, which is obligated to act on behalf of all employees.

Employment Relations Board within 30 days of the determination date, specifying the arbitrary and capricious nature of the determination. (Sec. 4117.09(C).)

There is also a separate procedure for employees adhering to certain religious beliefs. An employee who is a member of and follows established teachings of a religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization and which is exempt from taxation is not required to join or financially support any employee organization as a condition of employment. The employee becomes exempt from payment of any money to the employee organization and from payment of a fair share fee upon submission of proof of the religious conviction. In place of the fair share fee, the employee must contribute money equal to the amount of the fair share fee to a nonreligious charitable tax-exempt fund mutually agreed upon by the employee and the employee organization's representative, and submit receipts to the employee organization as evidence of payment. Failure of a conscientious objector to make such a payment would subject the employee to the same sanctions as would nonpayment of dues under the applicable collective bargaining agreement. (Sec. 4117.09(C).)

The bill eliminates all the provisions described above concerning fair share fees and nonreligious charitable fund payment requirements. (Secs. 4117.09 and 4117.11(A)(3).)

Unenforceable agreements

Under the bill, any agreement that purports to require employees to join or pay money to any exclusive representative is void and unenforceable. The bill also specifies that any agreement, understanding, or practice, written or oral, between a public employer and an exclusive representative that violates the Public Employees' Collective Bargaining Law is void and unenforceable. (Sec. 4117.09(C) and (F).)

Unfair labor practices of a public employer expanded

Current law sets forth a list of "unfair labor practices" relative to a public employer, its agents, and representatives (sec. 4117.11). The bill expands the list and makes the list consistent with an employee's right not to be discriminated against in regard to any condition of employment for an employee's involvement or lack of involvement with an exclusive representative, or the employee's payment or nonpayment of dues or other fees to an exclusive representative.

The bill makes it an unfair labor practice for a public employer, its agents, or representatives to:

(1) Encourage or discourage membership in an exclusive representative by discriminating in the hiring, tenure, or other terms and conditions of employment;

(2) Enter into an all-exclusive representative agreement that requires its employees to become members of an exclusive representative;

(3) Violate the terms of a collective bargaining agreement, including a term requiring the acceptance of an arbitration award;

(4) Refuse to obey an order issued by a court of competent jurisdiction under the Public Employees' Collective Bargaining Law;

(5) Deduct dues, fees, assessments, or other charges of any kind, including fair share fees, from an employee's earnings except when an employee gives the required written and signed authorization to do so;

(6) Employ or retain any person to observe, covertly or otherwise, employees or their representatives when, or to determine when, those employees or representatives are exercising their rights under the Public Employees' Collective Bargaining Law;

(7) Make, circulate, or cause to be made or circulated an employee blacklist. "Blacklist" means an understanding or agreement by which the names of employees or potential employees or a list of their names, description, or other means of identification is spoken, written, or implied for the purpose of being communicated or transmitted between two or more employers or their agents in order to prevent or prohibit the employee or potential employee from securing employment with one of those employers. "Blacklist" does not include job performance information of former or current employees or communications concerning employees, prospective employees, or former employees made by an employer, prospective employer, or former employer that are required by law.

(8) Commit any crime in connection with any controversy regarding employment relations with its employees, an exclusive representative, or an employee organization under the Public Employees' Collective Bargaining Law;

(9) Fail to conspicuously post and maintain the notice titled, "Employees' Freedom of Choice." (Sec. 4117.11(A).)

Good faith testimony required

The bill modifies an existing provision regarding employees filing charges or giving testimony against their employer. Current law specifies that a public employer engages in an unfair labor practice if the employer discharges or otherwise discriminates against an employee for filing charges or giving testimony

under the Public Employees' Collective Bargaining Law. The bill alters this provision to allow protection against discharge or other discrimination for the employee only if the employee testifies or files charges in good faith. (Sec. 4117.11(A)(4).)

Private sector collective bargaining

(see COMMENT)

For purposes of the bill's private sector provisions, the bill defines "employer" as "every person, firm, and private corporation that employs one or more employees regularly in the same business or in or about the same establishment under any contract of hire, whether the contract is express or implied, or oral or written." An "employee" is defined as, "every person, including an individual engaged in agricultural labor, in the service of any employer." An "employee organization" means, "any labor or bona fide organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment." (Sec. 4119.01.)

Private sector employer prohibitions

The bill specifies that an employer or agent or representative of an employer, individually or in concert, must not do any of the following:

(1) Require any person, as a condition of employment or of the continuation of employment, to become or remain a member of any employee organization;

(2) Require any person, as a condition of employment or of the continuation of employment, to pay any dues, fees, assessments, or other charges of any kind, including fair share fees, to an employee organization unless the person is a member of that employee organization;

(3) Require any person engaged in agricultural labor to be referred, recommended, or approved by an employee organization as a condition of employment or of the continuation of employment with the employer;

(4) Deduct from the wages, earnings, or compensation of any employee any dues, fees, assessments, or other charges of any kind, including fair share fees, to be held for or paid over to an employee organization unless the employer first receives a written authorization for those deductions as described below;

(5) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in the provisions concerning the rights of private employees to engage in collective bargaining;

(6) Discharge or otherwise discriminate against an employee because the employee has filed charges or given testimony in good faith under the Private Employees' Collective Bargaining Law;

(7) Enter into an all-employee organization agreement that requires its employees to become members of an employee organization;

(8) Refuse to obey an order issued by a court of competent jurisdiction under the provisions concerning the rights of private employees to engage in collective bargaining;

(9) Employ or retain any person to observe, covertly or otherwise, employees or their representatives when, or to determine when, those employees or representatives are exercising their rights under the provisions concerning the rights of private employees to engage in collective bargaining;

(10) Make, circulate, or cause to be made or circulated an employee blacklist. "Blacklist" has the same meanings and exceptions as previously described (see "*Unfair labor practices of public employer expanded*," above).

(11) Commit any crime in connection with any controversy regarding employment relations with its employees or an employee organization under the provisions concerning the rights of private employees to engage in collective bargaining;

(12) Fail to conspicuously post and maintain the Employees' Freedom of Choice notice under the provisions concerning the rights of private employees to engage in collective bargaining. (Sec. 4119.02.)

Other private sector provisions

The bill specifies that an employee may authorize the employee's employer to deduct dues, fees, assessments, or other charges of any kind directly from the employee's wages, earnings, or compensation to be held over for or paid over to an employee organization, provided the authorization is signed and in writing. Upon receipt of an employee authorization, the employer must promptly notify the employee in writing that the employee may revoke the authorization at any time, by providing a written notice of revocation. The bill specifies that the revocation becomes effective 30 days after the employer receives the revocation. (Sec. 4119.03.)

The bill specifies that any agreement, understanding, or practice, written or oral, between an employer and an employee organization that violates the provisions concerning the rights of private employees to engage in collective bargaining is void and unenforceable. (Sec. 4119.04(B).)

The bill requires private employers to post, continuously and conspicuously, a document titled, "Employees' Freedom of Choice" and to provide a copy to every employee upon initial hiring and every time the employee's employment status changes. The "Employees' Freedom of Choice" for private employees reads the same as the document of the same title for public employees except in its specific references to employees and unions (see *'The Employees' Freedom of Choice notice,*" above). (Sec. 4119.05.)

Remedies and violations

The bill provides that any person injured or likely to be injured as a result of a violation of the provisions concerning the rights of private employees to engage in collective bargaining, may bring an action for injunctive relief in the court of common pleas in the county where the violation allegedly occurred and may recover actual damages sustained as a result of the violation or threatened violation (sec. 4119.06). A person has the right, under the bill, to file a complaint alleging a violation of the provisions concerning the rights of private employees to engage in collective bargaining with the Attorney General and the county prosecutor of the county where the violation is alleged to have occurred. The bill requires both the Attorney General and the county prosecutor to investigate the complaint (sec. 4119.07). Under the bill, any person who violates the provisions concerning the rights of private employees to engage in collective bargaining is guilty of a first degree misdemeanor (sec. 4119.99).

Scope

The bill applies to private sector collective bargaining agreements and extensions and renewals of those agreements entered into on or after the effective date of the bill and to public sector collective bargaining agreements entered into on or after the effective date of the bill. (Sections 3 and 4.)

COMMENT

Any state regulation of the right of private employers and employees to bargain collectively runs the risk of being preempted by the National Labor Relations Act (NLRA). Enacted in the 1930s, the NLRA does not contain an express preemption provision. Nevertheless, the United State Supreme Court has interpreted the act as having broad and comprehensive applications to the field of

private sector collective bargaining, and but for a few narrowly drawn exceptions, the NLRA takes supremacy over state law.

The Court has held that, when a state purports to regulate activities that are protected by Chapter 7 of the NLRA governing labor-management relations (e.g., the right to bargain collectively) or that constitute an unfair labor practice under Chapter 8, the state jurisdiction must yield to the federal law. *San Diego Building Trades v. Garmon*, 359 U.S. 236, 244 (1959). Another type of federal preemption, the so-called "*Machinists* preemption," prohibits state and local regulation of areas that have been left "to be controlled by the free play of economic forces." *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 147 (1976).

While states are not totally excluded from activities affecting private sector labor relations, federal preemption likely would be invoked whenever a court thought there was a very real potential of conflict between federal law and the state regulation. Preemption under the NLRA is inappropriate only if the conduct at issue is a peripheral federal concern, or if the conduct involves a significant state interest that heavily outweighs the interests of the National Labor Relations Board (NLRB) in maintaining exclusive jurisdiction. *Garmon*, 359 U.S. at 243-244. When it is not clear whether the particular labor relations activity being regulated by a state is covered under the NLRA, state courts are not the primary tribunals to adjudicate such issues. Rather, the National Labor Relations Board created by the NLRA retains sole jurisdiction over matters concerning or potentially concerning the NLRA. *Garmon*, 359 U.S. at 244-245.

HISTORY

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Introduced	04-02-03	p. 316

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