



# Ohio Legislative Service Commission

## Bill Analysis

Meredith L. Rockwell

### **Sub. S.B. 5\***

129th General Assembly

(As Reported by S. Insurance, Commerce, and Labor)

Sen. Jones

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## **BILL SUMMARY**

### **The Public Employee Collective Bargaining Law**

#### **Community schools**

- Prohibits employees of community schools from collectively bargaining, except for conversion community schools.
- Allows the governing authority of a conversion community school to opt out of collectively bargaining with the community school's employees.<sup>1</sup>

#### **Police and fire department supervisors**

- Removes a limitation on the definition of "supervisor" with respect to members of police and fire departments, potentially making more people supervisors and ineligible to collectively bargain.<sup>2</sup>

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\* This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

<sup>1</sup> R.C. 3314.10, 4117.01(B)(1)(e) and (2), and 4117.03(B).

<sup>2</sup> R.C. 4117.01(F).

## **Contract employees and employees of regional councils of government**

- Excludes persons working pursuant to a contract between a public employer and private employer and over whom the National Labor Relations Board has declined jurisdiction from those persons eligible for collective bargaining.<sup>3</sup>
- Excludes employees of a regional council of government from those persons eligible for collective bargaining.<sup>4</sup>

## **Faculty of state institutions of higher education**

- Adds faculty who participate in the governance of a state institution of higher education, who are involved in personnel decisions, selection or review of administrators, planning and use of physical resources, budget preparation, and determination of education policies related to admissions, curriculum, subject matter, and methods of instruction and research to those employees who are considered management level employees, potentially making more people management level employees and ineligible to collectively bargain.<sup>5</sup>

## **Rights of public employees**

- Removes continuation, modification, or deletion of an existing collective bargaining agreement from the subject of collective bargaining.<sup>6</sup>
- Removes a provision granting specific authority to public school employees to collectively bargain for health care benefits.<sup>7</sup>

## **Strikes**

- Prohibits public employees from striking.<sup>8</sup>
- Allows a public employer to enjoin a strike.<sup>9</sup>

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<sup>3</sup> R.C. 4117.01(C).

<sup>4</sup> R.C. 4117.01(C)(18).

<sup>5</sup> R.C. 4117.01(F)(2) and (K).

<sup>6</sup> R.C. 4117.03(A).

<sup>7</sup> R.C. 4117.03(E).

<sup>8</sup> R.C. 4117.15.

<sup>9</sup> R.C. 4117.15 and 4117.27.

- Requires the public employer to deduct from the compensation of a striking employee an amount equal to twice the employee's daily rate of pay for each day or part thereof that the employee engaged in a strike.<sup>10</sup>
- Provides that an employee that strikes in violation of an injunction can be fined no more than \$1,000 or imprisoned for no longer than 30 days.<sup>11</sup>

### **Bargaining units and exclusive representatives**

- Changes the time limitations within which the State Employment Relations Board must act upon a request for recognition.<sup>12</sup>
- Allows the Board to determine appropriate units, remove classifications from a bargaining unit, or hold an election regardless of an agreement or a memorandum of understanding granting nonexclusive recognition.<sup>13</sup>
- Removes the provision prohibiting the appeal of a decision of the Board that determines the appropriate bargaining unit.<sup>14</sup>
- Prohibits an appropriate unit of firefighters from including rank and file members with members who are of the rank lieutenant and above.<sup>15</sup>

### **Subjects for collective bargaining**

- Makes the following inappropriate subjects for collective bargaining: (1) employer-paid contributions to any of the five public employee retirement systems, (2) health care benefits for which the employer is required to pay more than 85% of the cost, (3) the privatization of a public employer's services or contracting out of the public employer's work, and (4) the number of employees required to be on duty or employed in any department, division, or facility of the public employer.<sup>16</sup>

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<sup>10</sup> R.C. 4117.15(G).

<sup>11</sup> R.C. 4117.27.

<sup>12</sup> R.C. 4117.05(A).

<sup>13</sup> R.C. 4117.05(C).

<sup>14</sup> R.C. 4117.06(A).

<sup>15</sup> R.C. 4117.06(C)(6).

<sup>16</sup> R.C. 4117.08(B).

- Permits public employers to not bargain on any subject reserved to the management and direction of the governmental unit, even if the subject affects wages, hours, and terms and conditions of employment.<sup>17</sup>
- Prohibits an existing provision of a collective bargaining agreement that was modified, renewed, or extended that does not concern wages, hours, and terms and conditions from being a mandatory subject of collective bargaining.<sup>18</sup>
- Allows the public employer to do any of the following, unless the public employer specifically agrees otherwise in an express written provision of a collective bargaining agreement:
  - Hire, discharge, transfer, suspend, or discipline employees;
  - Determine the number of persons required to be employed or laid off;
  - Determine the qualifications of employees;
  - Determine the starting and quitting time and the number of hours to be worked by its employees;
  - Make any and all reasonable rules and regulations;
  - Determine the work assignments of its employees;
  - Determine the basis for selection, retention, and promotion of employees;
  - Determine the type of equipment used and the sequence of work processes;
  - Determine the making of technological alterations by revising either process or equipment or both;
  - Determine work standards and the quality and quantity of work to be produced;
  - Select and locate buildings and other facilities;
  - Establish, expand, transfer, or consolidate work processes and facilities;
  - Transfer or subcontract work;

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<sup>17</sup> R.C. 4117.08(C).

<sup>18</sup> R.C. 4117.08(A).

- Consolidate, merge, or otherwise transfer any or all of its facilities, property, processes, or work with or to any other municipal corporation or entity or effect or change in any respect the legal status, management, or responsibility of such property, facilities, processes, or work;
- Terminate or eliminate all or any part of its work or facilities.<sup>19</sup>

### **Collective bargaining agreement provisions and approval**

- Prohibits a collective bargaining agreement from prohibiting a public employer that is in a state of fiscal emergency from serving a written notice to terminate, modify, or negotiate the agreement.<sup>20</sup>
- Prohibits a collective bargaining agreement from prohibiting a public employer that is in a state of fiscal watch from serving a written notice to modify a collective bargaining agreement so that salary or benefit increases, or both, are suspended.<sup>21</sup>
- Prohibits a collective bargaining agreement from prohibiting a public employer from entering into a contract with another public or private sector entity to privatize the public employer's services or the contracting out of the public employer's work.<sup>22</sup>
- Prohibits a collective bargaining agreement from containing a provision that does any of the following:
  - Limits a public employer in determining the number of employees it employs or has working at any time, in any facility, building, classroom, on any work shift, or on any piece of equipment or vehicle;
  - Provides for the public employer to pay any portion of a public employee's state pension contributions or payments;
  - Provides for an hourly overtime payment rate that exceeds the overtime rate required by the federal Fair Labor Standards Act.

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<sup>19</sup> R.C. 4117.08(C).

<sup>20</sup> R.C. 4117.104.

<sup>21</sup> R.C. 4117.104.

<sup>22</sup> R.C. 4117.105.

- Requires the public employer to adhere to, follow, or continue any practices or benefits not specifically set forth in the specific written provisions of the agreement.<sup>23</sup>
- Prohibits a collective bargaining agreement from containing certain provisions regarding the deferred retirement option plan.<sup>24</sup>
- Prohibits a collective bargaining agreement from containing any provision that allows accrual of leave credits in excess of the following:
  - 6 weeks annually of paid vacation prior to 20 years of service;
  - 12 paid holidays annually;
  - 3 paid personal days annually.<sup>25</sup>
- Prohibits a collective bargaining agreement from containing a provision for the exchange or sell-back of a public employee's accumulated paid sick leave balance at the public employee's final retirement or death that provides for a cash payment that exceeds 50% of the public employee's total sick leave accumulations and for accumulated sick leave in excess of 1,000 hours.<sup>26</sup>
- Prohibits a public employer from agreeing to a provision in a collective bargaining agreement that requires the public employer, when a reduction in force is necessary, to use employee length of service as the only factor when making layoffs.<sup>27</sup>
- Prohibits a public employer from agreeing to a provision in a collective bargaining agreement that requires the employer to pay more than 85% of the cost paid for benefits.<sup>28</sup>

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<sup>23</sup> R.C. 4117.106.

<sup>24</sup> R.C. 4117.107.

<sup>25</sup> R.C. 4117.108.

<sup>26</sup> R.C. 4117.109.

<sup>27</sup> R.C. 4117.09(F).

<sup>28</sup> R.C. 4117.08(E).

- Requires the parties to consider, when determining the ability of the employer to pay for any terms, only the financial status of the employer at the time period surrounding the negotiations and the employer's inability to pay for those terms.<sup>29</sup>
- Prohibits the parties from considering, when determining the ability of the employer to pay for any terms, any potential future increase in the income of the public employer that would only be possible by the employer raising revenue, including, but not limited to, passing a levy or a bond issue, or the employer's ability to sell assets.<sup>30</sup>

### **Conflicting provisions of agreements**

- Makes laws pertaining to the provision of health care benefits to public employees prevail over conflicting collective bargaining agreements.<sup>31</sup>

### **School districts, educational service centers, community schools, and STEM schools**

- Prohibits a public employer that is a school district, educational service center, community school, or STEM school from entering into a collective bargaining agreement that does specified things, such as establishing a maximum number of students who may be assigned to a classroom or teacher.<sup>32</sup>
- Requires collective bargaining agreements between such an education-related public employer and public employees to comply with all applicable state or local laws or ordinances regarding wages, hours, and terms and conditions of employment, unless the conflicting provision establishes benefits that are less than provided in the law or ordinance.<sup>33</sup>

### **Dispute resolution procedures, strikes, and unfair labor practices**

- Revises collective bargaining dispute resolution procedures.<sup>34</sup>

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<sup>29</sup> R.C. 4117.08(D).

<sup>30</sup> R.C. 4117.08(D).

<sup>31</sup> R.C. 4117.10.

<sup>32</sup> R.C. 4117.081.

<sup>33</sup> R.C. 4117.081.

<sup>34</sup> R.C. 4117.14.

- Requires the employer and the State Employment Relations Board to post in a conspicuous location on the web site maintained by the board and the employer the terms of the last collective bargaining agreements offered by the employer and the exclusive representative at specific times.<sup>35</sup>
- Revises the factors that a person or group administering an alternate dispute resolution procedure must take into account.<sup>36</sup>
- If either party rejects a fact finding panel's recommendations, permits the public employer to implement, in whole or in part, any of those recommendations that have been approved by the appropriate legislative authority.<sup>37</sup>
- Removes the mandatory final offer settlement conciliation procedure for public employees who do not have the right to strike.<sup>38</sup>
- Requires a public employer to report certain information about compensation paid to public employees under a collective bargaining agreement.<sup>39</sup>
- Specifies that expressions of views, opinions, and arguments are not unfair labor practices, and cannot be used as evidence of such, without a threat.<sup>40</sup>
- Revises what constitutes an unfair labor practice.<sup>41</sup>
- Revises the procedures for hearing an unfair labor practice complaint.<sup>42</sup>
- Repeals the provision requiring the Public Employee Collective Bargaining Law to be liberally construed.<sup>43</sup>

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<sup>35</sup> R.C. 4117.14.

<sup>36</sup> R.C. 4117.14.

<sup>37</sup> R.C. 4117.14.

<sup>38</sup> R.C. 4117.14.

<sup>39</sup> R.C. 4117.26.

<sup>40</sup> R.C. 4117.11(C).

<sup>41</sup> R.C. 4117.11.

<sup>42</sup> R.C. 4117.12.

<sup>43</sup> R.C. 4117.22.

## Public employee pay

- Creates salary ranges by removing the steps from the salary schedules.<sup>44</sup>
- Requires merit-based pay for most public employees, including board and commission members, and makes other, related changes.<sup>45</sup>
- Requires performance-based pay for teachers and nonteaching school employees.
  - Requires a school board to measure performance by considering the level of license the teacher holds, whether the teacher is a "highly qualified teacher," the value-added measure the board uses to determine the performance of the students assigned to the teacher's classroom, the results of the teacher's performance evaluations or peer reviews.<sup>46</sup>

## Public employee benefits

- Caps vacation leave at 7.7 hours per biweekly pay period.<sup>47</sup>
- Reduces sick leave accrual for most public employees from 4.6 hours to 3.1 hours per biweekly pay period.<sup>48</sup>
- Limits public employer contributions toward health care benefit costs to 85%.<sup>49</sup>
- Requires health care benefits provided to management level employees to be the same as any health care benefits provided to other employees of the same public employer.<sup>50</sup>
- Requires boards of education to adopt policies to provide leave with pay for school employees and abolishes statutorily provided leave for those employees.<sup>51</sup>

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<sup>44</sup> See e.g., R.C. 124.15 and 124.152.

<sup>45</sup> R.C. 124.15.

<sup>46</sup> R.C. 3317.13.

<sup>47</sup> R.C. 124.134.

<sup>48</sup> R.C. 124.38.

<sup>49</sup> R.C. 124.81(I), 124.82(H), and 3313.202.

<sup>50</sup> R.C. 124.81(H) and 124.82(G).

<sup>51</sup> R.C. 3319.141.

- Abolishes continuing contracts for teachers, except for those continuing contracts in existence prior to the effective date of the bill and revises the law relating to limited contracts.<sup>52</sup>
- Prohibits a public employer from paying employee contributions to the five public employee retirement systems.<sup>53</sup>
- Requires health care benefits provided through a jointly administered trust fund to be the same as the health care benefits provided to other public employees.<sup>54</sup>

### **Reduction in the public sector work force**

- Removes consideration of seniority and of length of service, by itself, from decisions regarding a reduction in work force of certain public employees.<sup>55</sup>
- Makes changes to retention point provisions, including changes concerning the calculation of retention points and the layoff procedures when retention points for two employees are the same.<sup>56</sup>
- Prohibits a public employer from violating Ohio or federal civil rights law when conducting a reduction in force.<sup>57</sup>

## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-01-11
Reported, S. Insurance, Commerce & Labor	---

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<sup>52</sup> R.C. 3319.08 and 3319.11.

<sup>53</sup> R.C. 145.47, 724.31, 3307.27, 3309.47, and 5505.15.

<sup>54</sup> R.C. 124.81 and 124.82.

<sup>55</sup> See e.g., R.C. 306.04, 709.012, and 3316.07.

<sup>56</sup> R.C. 124.325.

<sup>57</sup> R.C. 4113.80.