



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Paul Luzzi

H.B. 53

132nd General Assembly
(As Introduced)

Reps. Becker, Hood, Brinkman, Dean, Thompson, Vitale, Goodman, Riedel, Roegner, Merrin, Antani, Zeltwanger, Keller

BILL SUMMARY

- Grants public employees the right to refrain from engaging in any concerted activities for the purpose of collective bargaining or other mutual aid and protection.
- Prohibits an employee organization (essentially, a union) from representing a public employee who is not a member of the organization and limits the employee organization's duty of fair representation to only those public employees who are organization members.
- Limits an employee organization's status as exclusive representative to only those bargaining unit members who are members of the organization and appears to limit the application of a public employee collective bargaining agreement to those employees who are members.
- Limits current law allowing alternative leave plans for certain employees, leave accrual during certain employment transfers, and certain teacher peer review plans to only members of an employee organization.
- Subjects employees of a state institution of higher education, the Ohio Agricultural Research and Development Center, and the Bureau of Workers' Compensation who are not members of an employee organization but are in a bargaining unit to a compensation plan developed by the employing entity.
- Makes a supervisor or professional employed by the Department of Transportation who is in a bargaining unit but not a member of an employee organization a member of the Department's career professional service.

- Prohibits a public employer from agreeing to a provision in a collective bargaining agreement that requires a public employee to pay dues or fees to an employee organization as a condition for securing or retaining employment.
- Eliminates the ability of the parties to a collective bargaining agreement governing public employment to include a provision that requires nonmembers of the employee organization to pay a fair share fee to an employee organization.
- Allows a public employee who is not a member of an employee organization to make voluntary contributions to an employee organization.
- Makes an appropriation to be used by the State Employment Relations Board to pay the costs of developing, producing, and distributing written information explaining a public employee's rights and options under the Public Employees Collective Bargaining Law.

CONTENT AND OPERATION

Collective bargaining representation

The Public Employees Collective Bargaining Law¹ (PECBL) regulates public sector labor relations in Ohio. In addition to other rights specified in the PECBL, a public employee covered by the PECBL has the right to:

(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in the PECBL, any employee organization (essentially, a union) of their own choosing; and

(2) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

The bill grants these public employees the right to refrain from engaging in concerted activities for the purpose of collective bargaining or other mutual aid and protection. As noted above, current law is silent on the right to refrain.²

Under the bill, if a public employee does not join the employee organization that the State Employment Relations Board ("SERB") has recognized as the exclusive representative for the employee's collective bargaining unit, the organization is prohibited from representing that employee (See **COMMENT**). Those employees no

¹ R.C. Chapter 4117.

² R.C. 4117.03(A)(2).

longer appear to be covered under the applicable collective bargaining agreement and therefore are covered by the applicable laws establishing wages, hours, and terms and conditions of employment.³

Under current law, the exclusive representative of a bargaining unit must fairly represent all of the employees in the unit regardless of membership.

Currently, a collective bargaining agreement applies to all public employees in the bargaining unit covered by the agreement regardless of membership in the unit's representative. The State Employment Relations Board (SERB), which administers and enforces the PECBL, establishes bargaining units based on factors such as employee desires, community of interest, and public employee working conditions. An employee organization becomes the exclusive representative of all of the employees the unit by either an election by the voting employees in the unit or recognition by the public employer and certification by SERB. Once selected, that employee organization is the exclusive representative for that unit for a time period specified in the PECBL. A collective bargaining agreement entered into by the employer and the exclusive representative governs the wages, hours, and terms and conditions of employment for those employees covered by it, and the agreement prevails over conflicting laws unless an exception applies.⁴

County departments of job and family services

Under the bill, an employee of a county department of job and family services who is a member of a bargaining unit but is not to be a member of the exclusive representative is subject to salaries or wages, supplemental and alternative leave policies, and any other benefits package established by the board of county commissioners of the county in which the department is located. Under current law these salaries and wages, leave policies, and other benefit packages do not apply to an employee for whom SERB has established an appropriate bargaining unit unless the employees in the unit failed to elect a representative or all potential representatives withdrew from an election.⁵

Compensation plans by certain state entities

Under the bill, an employee of a state institution of higher education, the Ohio Agricultural Research and Development Center, or the Bureau of Workers'

³ R.C. 4117.04, 4117.10, and 4117.11, with conforming changes in R.C. 121.40, 4121.03, and 4121.121.

⁴ R.C. 4117.04, 4117.05, 4117.10, and 4117.11 and R.C. 4117.06, not in the bill.

⁵ R.C. 124.14.



Compensation who has been assigned to a bargaining unit but who is not a member of the unit's exclusive representative is paid in accordance with the compensation plan established by the employing authority. Under continuing law, the listed entities all have the power to establish compensation plans, including schedules of hourly rates. Currently, compensation plans established by these entities do not apply to employees who SERB has assigned to a bargaining unit.⁶

Teacher peer review plans

Under the bill, a teacher peer review plan in a collective bargaining agreement applies only to teachers who are members of the employee organization that negotiated the agreement. Currently a teacher peer review plan applies to all teachers in the bargaining unit regardless of membership in the employee organization. Under a teacher peer review plan teachers or representatives from the employee organization representing those teachers assist, instruct, review, evaluate, appraise, and make recommendations for other teachers in the same bargaining unit. The plan can also provide for determining whether to retain, discharge, or renew a teacher.⁷

Bargaining unit transfers

Under current law, the Director of Administrative Services must establish a public employee's compensation and equitably adjust the employee's maximum leave accrual schedule when the employee transfers into or out of a bargaining unit or transfers between bargaining units. Under the bill, the Director only makes the adjustment for a transferee who is a member of an employee organization.⁸

Department of Transportation

The bill makes a supervisory or professional employee of the Department of Transportation who is in a bargaining unit but who is not a member of the exclusive representative a part of the Department's career professional service, provided the employee exercises authority that is not merely routine or clerical and reports only to a higher level employee in the career professional service. An employee in the career professional service must adhere to a written performance action plan required under continuing law and is subject to disciplinary action and appeal rights that differ from those to which other members of the classified civil service are subject.⁹

⁶ R.C. 3345.31, 4117.10, 4121.121, and 4121.69.

⁷ R.C. 4117.09(D).

⁸ R.C. 124.15(M).

⁹ R.C. 5501.20.

Dues and fees

The bill prohibits a public employer from agreeing to a provision in a collective bargaining agreement requiring a public employee to pay dues or fees to an employee organization as a condition for securing or retaining employment. Although continuing law prohibits a public employer from agreeing to a provision that requires a public employee to join an employee organization, current law allows an agreement to include a provision requiring a public employee who is in the bargaining unit but not a member of the exclusive representative to pay a fee to cover the costs associated with collective bargaining activities (a "fair share fee"). The U.S. Supreme Court recently held that requiring a nonunion public sector employee to pay dues or fair share fees violates the First Amendment of the U.S. Constitution. Therefore, the fair share fee provision in current law likely is unenforceable.

Nothing in the bill prohibits a public employee who is not a member of an employee organization from making a voluntary contribution to the organization.¹⁰

Application

The bill applies to collective bargaining agreements entered into on or after the bill's effective date.¹¹

Appropriation

The bill appropriates \$30,000 from the General Revenue Fund in Fiscal Year 2018. SERB must use the money to pay the costs of developing, producing, and distributing written information explaining a public employee's rights and options under the PECBL.¹²

COMMENT

The U.S. Supreme Court has held that the First Amendment to the U.S. Constitution broadly protects people's right to associate with each other for the lawful expression of a common point of view. A law that limits a public sector exclusive representative's ability to represent nonmembers who want representation might be challenged under the First Amendment. Laws that limit an advocacy group's right to

¹⁰ R.C. 4117.09(C), with conforming changes in R.C. 9.81 and 4117.11, and *Janus v. AFSCME, Council 31*, 138 S.Ct. 2448 (2018).

¹¹ Section 3.

¹² Sections 4 and 5.



provide representation must be narrowly tailored to avoid real and specific harms.¹³ Only a court can determine whether an exclusive representative is an advocacy group and, if so, whether prohibiting the exclusive representative from representing a nonmember who wants representation complies with the First Amendment right to associate.

HISTORY

ACTION	DATE
Introduced	02-13-17

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¹³ *NAACP v. Button*, 371 U.S. 415 (1963) and *In re Primus*, 436 U.S. 412 (1978).

