

**As Reported by the House Commerce and Labor Committee**

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**Sub. H. B. No. 271**

**Representatives Patten, Stewart**

**Cosponsors: Representatives DeGeeter, Dodd, Domenick, Foley, Garland,  
Gerberry, Goyal, Hagan, Harris, Letson, Luckie, Mallory, Murray, Oelslager,  
Phillips, Pryor, Szollosi, Ujvagi, Brown**

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**A B I L L**

To amend sections 4117.01 and 4117.09 of the Revised 1  
Code to modify coverage of the Public Employees' 2  
Collective Bargaining Law with respect to township 3  
fire departments. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4117.01 and 4117.09 of the Revised 5  
Code be amended to read as follows: 6

**Sec. 4117.01.** As used in this chapter: 7

(A) "Person," in addition to those included in division (C) 8  
of section 1.59 of the Revised Code, includes employee 9  
organizations, public employees, and public employers. 10

(B) (1) "Public employer" means the state or any political 11  
subdivision of the state located entirely within the state, 12  
including, without limitation, any municipal corporation with a 13  
population of at least five thousand ~~according to the most recent~~ 14  
~~federal decennial census~~; county; township with a population of at 15  
least five thousand in the unincorporated area of the township 16

~~according to the most recent federal decennial census; school~~ 17  
~~district; governing authority of a community school established~~ 18  
~~under Chapter 3314. of the Revised Code; state institution of~~ 19  
~~higher learning; public or special district; state agency,~~ 20  
~~authority, commission, or board; or other branch of public~~ 21  
~~employment.~~ 22

(2) In addition, with respect to members of a fire department 23  
of a township with a population of less than five thousand in the 24  
unincorporated area of the township, "public employer" means a 25  
township with a total population of at least five thousand in the 26  
incorporated and unincorporated areas of the township that are 27  
served by the township fire department. 28

(3) For purposes of division (B) of this section, population 29  
shall be determined in accordance with the most recent federal 30  
decennial census. 31

(C) "Public employee" means any person holding a position by 32  
appointment or employment in the service of a public employer, 33  
including any person working pursuant to a contract between a 34  
public employer and a private employer and over whom the national 35  
labor relations board has declined jurisdiction on the basis that 36  
the involved employees are employees of a public employer, except: 37

(1) Persons holding elective office; 38

(2) Employees of the general assembly and employees of any 39  
other legislative body of the public employer whose principal 40  
duties are directly related to the legislative functions of the 41  
body; 42

(3) Employees on the staff of the governor or the chief 43  
executive of the public employer whose principal duties are 44  
directly related to the performance of the executive functions of 45  
the governor or the chief executive; 46

(4) Persons who are members of the Ohio organized militia, 47

while training or performing duty under section 5919.29 or 5923.12 48  
of the Revised Code; 49

(5) Employees of the state employment relations board, 50  
including those employees of the state employment relations board 51  
utilized by the state personnel board of review in the exercise of 52  
the powers and the performance of the duties and functions of the 53  
state personnel board of review; 54

(6) Confidential employees; 55

(7) Management level employees; 56

(8) Employees and officers of the courts, assistants to the 57  
attorney general, assistant prosecuting attorneys, and employees 58  
of the clerks of courts who perform a judicial function; 59

(9) Employees of a public official who act in a fiduciary 60  
capacity, appointed pursuant to section 124.11 of the Revised 61  
Code; 62

(10) Supervisors; 63

(11) Students whose primary purpose is educational training, 64  
including graduate assistants or associates, residents, interns, 65  
or other students working as part-time public employees less than 66  
fifty per cent of the normal year in the employee's bargaining 67  
unit; 68

(12) Employees of county boards of election; 69

(13) Seasonal and casual employees as determined by the state 70  
employment relations board; 71

(14) Part-time faculty members of an institution of higher 72  
education; 73

(15) Participants in a work activity, developmental activity, 74  
or alternative work activity under sections 5107.40 to 5107.69 of 75  
the Revised Code who perform a service for a public employer that 76  
the public employer needs but is not performed by an employee of 77

the public employer if the participant is not engaged in paid 78  
employment or subsidized employment pursuant to the activity; 79

(16) Employees included in the career professional service of 80  
the department of transportation under section 5501.20 of the 81  
Revised Code; 82

(17) Employees of community-based correctional facilities and 83  
district community-based correctional facilities created under 84  
sections 2301.51 to 2301.58 of the Revised Code who are not 85  
subject to a collective bargaining agreement on June 1, 2005+; 86

(D) "Employee organization" means any labor or bona fide 87  
organization in which public employees participate and that exists 88  
for the purpose, in whole or in part, of dealing with public 89  
employers concerning grievances, labor disputes, wages, hours, 90  
terms, and other conditions of employment. 91

(E) "Exclusive representative" means the employee 92  
organization certified or recognized as an exclusive 93  
representative under section 4117.05 of the Revised Code. 94

(F) "Supervisor" means any individual who has authority, in 95  
the interest of the public employer, to hire, transfer, suspend, 96  
lay off, recall, promote, discharge, assign, reward, or discipline 97  
other public employees; to responsibly direct them; to adjust 98  
their grievances; or to effectively recommend such action, if the 99  
exercise of that authority is not of a merely routine or clerical 100  
nature, but requires the use of independent judgment, provided 101  
that: 102

(1) Employees of school districts who are department 103  
chairpersons or consulting teachers shall not be deemed 104  
supervisors; 105

(2) With respect to members of a police or fire department, 106  
no person shall be deemed a supervisor except the chief of the 107  
department or those individuals who, in the absence of the chief, 108

are authorized to exercise the authority and perform the duties of 109  
the chief of the department. Where prior to June 1, 1982, a public 110  
employer pursuant to a judicial decision, rendered in litigation 111  
to which the public employer was a party, has declined to engage 112  
in collective bargaining with members of a police or fire 113  
department on the basis that those members are supervisors, those 114  
members of a police or fire department do not have the rights 115  
specified in this chapter for the purposes of future collective 116  
bargaining. The state employment relations board shall decide all 117  
disputes concerning the application of division (F)(2) of this 118  
section. 119

(3) With respect to faculty members of a state institution of 120  
higher education, heads of departments or divisions are 121  
supervisors; however, no other faculty member or group of faculty 122  
members is a supervisor solely because the faculty member or group 123  
of faculty members participate in decisions with respect to 124  
courses, curriculum, personnel, or other matters of academic 125  
policy; 126

(4) No teacher as defined in section 3319.09 of the Revised 127  
Code shall be designated as a supervisor or a management level 128  
employee unless the teacher is employed under a contract governed 129  
by section 3319.01, 3319.011, or 3319.02 of the Revised Code and 130  
is assigned to a position for which a license deemed to be for 131  
administrators under state board rules is required pursuant to 132  
section 3319.22 of the Revised Code. 133

(G) "To bargain collectively" means to perform the mutual 134  
obligation of the public employer, by its representatives, and the 135  
representatives of its employees to negotiate in good faith at 136  
reasonable times and places with respect to wages, hours, terms, 137  
and other conditions of employment and the continuation, 138  
modification, or deletion of an existing provision of a collective 139  
bargaining agreement, with the intention of reaching an agreement, 140

or to resolve questions arising under the agreement. "To bargain collectively" includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.

(H) "Strike" means continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Strike" does not include a stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment that are abnormal to the place of employment.

(I) "Unauthorized strike" includes, but is not limited to, concerted action during the term or extended term of a collective bargaining agreement or during the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Unauthorized strike" includes any such action, absence, stoppage, slowdown, or abstinence when done partially or intermittently, whether during or after the expiration of the term or extended term of a collective bargaining agreement or during or after the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code.

(J) "Professional employee" means any employee engaged in work that is predominantly intellectual, involving the consistent exercise of discretion and judgment in its performance and

requiring knowledge of an advanced type in a field of science or 173  
learning customarily acquired by a prolonged course in an 174  
institution of higher learning or a hospital, as distinguished 175  
from a general academic education or from an apprenticeship; or an 176  
employee who has completed the courses of specialized intellectual 177  
instruction and is performing related work under the supervision 178  
of a professional person to become qualified as a professional 179  
employee. 180

(K) "Confidential employee" means any employee who works in 181  
the personnel offices of a public employer and deals with 182  
information to be used by the public employer in collective 183  
bargaining; or any employee who works in a close continuing 184  
relationship with public officers or representatives directly 185  
participating in collective bargaining on behalf of the employer. 186

(L) "Management level employee" means an individual who 187  
formulates policy on behalf of the public employer, who 188  
responsibly directs the implementation of policy, or who may 189  
reasonably be required on behalf of the public employer to assist 190  
in the preparation for the conduct of collective negotiations, 191  
administer collectively negotiated agreements, or have a major 192  
role in personnel administration. Assistant superintendents, 193  
principals, and assistant principals whose employment is governed 194  
by section 3319.02 of the Revised Code are management level 195  
employees. With respect to members of a faculty of a state 196  
institution of higher education, no person is a management level 197  
employee because of the person's involvement in the formulation or 198  
implementation of academic or institution policy. 199

(M) "Wages" means hourly rates of pay, salaries, or other 200  
forms of compensation for services rendered. 201

(N) "Member of a police department" means a person who is in 202  
the employ of a police department of a municipal corporation as a 203  
full-time regular police officer as the result of an appointment 204

from a duly established civil service eligibility list or under 205  
section 737.15 or 737.16 of the Revised Code, a full-time deputy 206  
sheriff appointed under section 311.04 of the Revised Code, a 207  
township constable appointed under section 509.01 of the Revised 208  
Code, or a member of a township police district police department 209  
appointed under section 505.49 of the Revised Code. 210

(O) "Members of the state highway patrol" means highway 211  
patrol troopers and radio operators appointed under section 212  
5503.01 of the Revised Code. 213

(P) "Member of a fire department" means a person who is in 214  
the employ of a fire department of a municipal corporation or a 215  
township as a fire cadet, full-time regular firefighter, or 216  
promoted rank as the result of an appointment from a duly 217  
established civil service eligibility list or under section 218  
505.38, 709.012, or 737.22 of the Revised Code. 219

(Q) "Day" means calendar day. 220

**Sec. 4117.09.** (A) The parties to any collective bargaining 221  
agreement shall reduce the agreement to writing and both execute 222  
it. 223

(B) The agreement shall contain a provision that: 224

(1) Provides for a grievance procedure which may culminate 225  
with final and binding arbitration of unresolved grievances, and 226  
disputed interpretations of agreements, and which is valid and 227  
enforceable under its terms when entered into in accordance with 228  
this chapter. No publication thereof is required to make it 229  
effective. A party to the agreement may bring suits for violation 230  
of agreements or the enforcement of an award by an arbitrator in 231  
the court of common pleas of any county wherein a party resides or 232  
transacts business. 233

(2) Authorizes the public employer to deduct the periodic 234



dues, initiation fees, and assessments of members of the exclusive 235  
representative upon presentation of a written deduction 236  
authorization by the employee. 237

(C) The agreement may contain a provision that requires as a 238  
condition of employment, on or after a mutually agreed upon 239  
probationary period or sixty days following the beginning of 240  
employment, whichever is less, or the effective date of a 241  
collective bargaining agreement, whichever is later, that the 242  
employees in the unit who are not members of the employee 243  
organization pay to the employee organization a fair share fee. 244  
The arrangement does not require any employee to become a member 245  
of the employee organization, nor shall fair share fees exceed 246  
dues paid by members of the employee organization who are in the 247  
same bargaining unit. Any public employee organization 248  
representing public employees pursuant to this chapter shall 249  
prescribe an internal procedure to determine a rebate, if any, for 250  
nonmembers which conforms to federal law, provided a nonmember 251  
makes a timely demand on the employee organization. Absent 252  
arbitrary and capricious action, such determination is conclusive 253  
on the parties except that a challenge to the determination may be 254  
filed with the state employment relations board within thirty days 255  
of the determination date specifying the arbitrary or capricious 256  
nature of the determination and the board shall review the rebate 257  
determination and decide whether it was arbitrary or capricious. 258  
The deduction of a fair share fee by the public employer from the 259  
payroll check of the employee and its payment to the employee 260  
organization is automatic and does not require the written 261  
authorization of the employee. 262

The internal rebate procedure shall provide for a rebate of 263  
expenditures in support of partisan politics or ideological causes 264  
not ~~germaine~~ germane to the work of employee organizations in the 265  
realm of collective bargaining. 266

Any public employee who is a member of and adheres to 267  
established and traditional tenets or teachings of a bona fide 268  
religion or religious body which has historically held 269  
conscientious objections to joining or financially supporting an 270  
employee organization and which is exempt from taxation under the 271  
provisions of the Internal Revenue Code shall not be required to 272  
join or financially support any employee organization as a 273  
condition of employment. Upon submission of proper proof of 274  
religious conviction to the board, the board shall declare the 275  
employee exempt from becoming a member of or financially 276  
supporting an employee organization. The employee shall be 277  
required, in lieu of the fair share fee, to pay an amount of money 278  
equal to the fair share fee to a nonreligious charitable fund 279  
exempt from taxation under section 501(c)(3) of the Internal 280  
Revenue Code mutually agreed upon by the employee and the 281  
representative of the employee organization to which the employee 282  
would otherwise be required to pay the fair share fee. The 283  
employee shall furnish to the employee organization written 284  
receipts evidencing such payment, and failure to make the payment 285  
or furnish the receipts shall subject the employee to the same 286  
sanctions as would nonpayment of dues under the applicable 287  
collective bargaining agreement. 288

No public employer shall agree to a provision requiring that 289  
a public employee become a member of an employee organization as a 290  
condition for securing or retaining employment. 291

(D) As used in this division, "teacher" means any employee of 292  
a school district certified to teach in the public schools of this 293  
state. 294

The agreement may contain a provision that provides for a 295  
peer review plan under which teachers in a bargaining unit or 296  
representatives of an employee organization representing teachers 297  
may, for other teachers of the same bargaining unit or teachers 298

whom the employee organization represents, participate in 299  
assisting, instructing, reviewing, evaluating, or appraising and 300  
make recommendations or participate in decisions with respect to 301  
the retention, discharge, renewal, or nonrenewal of, the teachers 302  
covered by a peer review plan. 303

The participation of teachers or their employee organization 304  
representative in a peer review plan permitted under this division 305  
shall not be construed as an unfair labor practice under this 306  
chapter or as a violation of any other provision of law or rule 307  
adopted pursuant thereto. 308

(E) No agreement shall contain an expiration date that is 309  
later than three years from the date of execution. The parties may 310  
extend any agreement, but the extensions do not affect the 311  
expiration date of the original agreement. 312

(F) An agreement entered into between a township and an 313  
employee organization representing the members of the township's 314  
fire department shall contain a provision stating that if any 315  
incorporated municipal corporations located within the township 316  
elect to no longer receive fire protection through the township, 317  
and as a result the population served by that township's fire 318  
department becomes less than five thousand according to the most 319  
recent federal decennial census, the township, at the township's 320  
option, may terminate the agreement entered into between the 321  
township and the employee organization. 322

As used in this division, "township" means a public employer 323  
as defined in division (B)(2) of section 4117.01 of the Revised 324  
Code. 325

**Section 2.** That existing sections 4117.01 and 4117.09 of the 326  
Revised Code are hereby repealed. 327