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Representatives Patten, Stewart

**Cosponsors: Representatives DeGeeter, Dodd, Domenick, Foley, Garland,
Gerberry, Goyal, Hagan, Harris, Letson, Luckie, Mallory, Murray, Oelslager,
Phillips, Pryor, Szollosi, Ujvagi, Brown, Book, Boyd, Carney, Celeste,
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Okey, Otterman, Pillich, Sayre, Skindell, Slesnick, Weddington, Williams, B.,
Williams, S., Winburn, Yates, Yuko**

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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
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(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 141
collectively" includes executing a written contract incorporating 142
the terms of any agreement reached. The obligation to bargain 143
collectively does not mean that either party is compelled to agree 144
to a proposal nor does it require the making of a concession. 145

(H) "Strike" means continuous concerted action in failing to 146
report to duty; willful absence from one's position; or stoppage 147
of work in whole from the full, faithful, and proper performance 148
of the duties of employment, for the purpose of inducing, 149
influencing, or coercing a change in wages, hours, terms, and 150
other conditions of employment. "Strike" does not include a 151
stoppage of work by employees in good faith because of dangerous 152
or unhealthful working conditions at the place of employment that 153
are abnormal to the place of employment. 154

(I) "Unauthorized strike" includes, but is not limited to, 155
concerted action during the term or extended term of a collective 156
bargaining agreement or during the pendency of the settlement 157
procedures set forth in section 4117.14 of the Revised Code in 158
failing to report to duty; willful absence from one's position; 159
stoppage of work; slowdown, or abstinence in whole or in part from 160
the full, faithful, and proper performance of the duties of 161
employment for the purpose of inducing, influencing, or coercing a 162
change in wages, hours, terms, and other conditions of employment. 163
"Unauthorized strike" includes any such action, absence, stoppage, 164
slowdown, or abstinence when done partially or intermittently, 165
whether during or after the expiration of the term or extended 166
term of a collective bargaining agreement or during or after the 167
pendency of the settlement procedures set forth in section 4117.14 168

of the Revised Code. 169

(J) "Professional employee" means any employee engaged in 170
work that is predominantly intellectual, involving the consistent 171
exercise of discretion and judgment in its performance and 172
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
peer review plan under which teachers in a bargaining unit or
representatives of an employee organization representing teachers
may, for other teachers of the same bargaining unit or teachers
whom the employee organization represents, participate in
assisting, instructing, reviewing, evaluating, or appraising and
make recommendations or participate in decisions with respect to
the retention, discharge, renewal, or nonrenewal of, the teachers
covered by a peer review plan.

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

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

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

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

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