SECOND UPDATED VERSION*

Ohio Legislative Service Commission

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Am. Sub. S.B. 5

129th General Assembly
(As Passed by the General Assembly)

Sen. Jones

Effective date: As the result of the referendum vote on November 8, 2011, S.B. 5 is void.

ACT SUMMARY

The Public Employees' Collective Bargaining Law

Strikes

- Prohibits "public employees" from striking.
- 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.

Ability to bargain

- Expands the definition of "supervisor" with respect to members of a fire or police department.
- Expands the definition of "supervisor" and "management level employee" with respect to faculty of a state institution of higher education to include those involved in certain decisions.
- 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.

* This update reflects the result of the referendum.

- Limits the ability of specified other employees to collectively bargain with their public employers, including regional council of government employees and certain members of the unclassified civil service, to allow the employees to bargain only if the public employer elects to do so.

Right to bargain

- Removes continuation, modification, or deletion of an existing collective bargaining agreement from the subject of collective bargaining.

Bargaining units and exclusive representatives

- Changes the time limitations within which the State Employment Relations Board must act upon a request for recognition.

- Prohibits an appropriate unit of firefighters from including rank and file members with members who are of the rank lieutenant and above.

- Revises recognition procedures.

- Permits certain groups to file a decertification petition demonstrating that 30% of the employees in the described bargaining unit support the petition.

Subjects of collective bargaining

- Expands the list of subjects that are inappropriate for collective bargaining.

- 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.

- 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.

- Allows a public employer to engage in specified employment related actions at the employer's discretion unless the public employer specifically agrees otherwise in an express written provision of a collective bargaining agreement, with certain exceptions concerning equipment.

Provisions of a collective bargaining agreement

- Prohibits a public employer that is a school district, educational service center, a conversion community school that collectively bargains, 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.

- 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.

- 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.

- 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.

- Prohibits an agreement from containing a provision that requires as a condition of employment that the nonmembers of the employee organization pay to the employee organization a fair share fee.

- Prohibits a collective bargaining agreement entered into or renewed on or after the act's effective date from containing provisions limiting a public employer's ability to privatize operations.

- Prohibits a collective bargaining agreement entered into or renewed on or after the act's effective date from containing provisions for certain types of leave to accrue above listed amounts or to pay out for sick leave at a rate higher than specified amounts.

- Prohibits a collective bargaining agreement entered into or renewed on or after the act's effective date from containing certain provisions regarding the deferred retirement option plan.

- Limits the previously required grievance procedure to unresolved grievances that are based on the disputed interpretations of the written provisions of the agreement.

Dispute resolution

- Eliminates the ability of the parties to submit disputes to an agreed-upon dispute resolution procedure.

- Extends the timelines involved in the dispute resolution process.

- Expands the list of factors a fact-finder must consider in resolving disputes, and requires the fact-finder to consider as the primary factor the interests and welfare of the public and the ability of the public employer to finance and administer the issues proposed.

- Eliminates the final offer settlement procedure.

- Requires the legislative body of the public employer to be the final decision-maker with respect to any dispute that is unresolved during the fact-finding process, and prescribes procedures and requirements for the legislative body to make a determination.

- Requires any agreement determined by the legislative body to be in effect for three years.

- Requires, if the legislative body fails to select a last best offer, the public employer's last best offer to become the agreement between the parties.

- Allows, for certain public employers, if the legislative body selects the last best offer that costs more and the chief financial officer of the legislative body determines insufficient funds exist or refuses to determine whether sufficient funds exist to cover the agreement, the last best offers to be submitted to the voters for selection.

- Prescribes procedures to place the last best offers on the ballot and for that election.

Unfair labor practices

- Expands the list of unfair labor practices that may be committed by an employee organization, its agents, or public employees and the remedies that may be applied for unfair labor practices committed by those entities.

- Revises the procedures regarding hearings on unfair labor practice charges.

Miscellaneous changes in the Public Employee Collective Bargaining Law

- Requires a public employer to report certain information about compensation paid to public employees under a collective bargaining agreement.

- Repeals the provision requiring the Public Employee Collective Bargaining Law to be liberally construed.

Public employee pay

- Generally eliminates statutory salary schedules and steps.

- Requires performance-based pay for most public employees, including board and commission members, and makes other, related changes.

- Requires performance-based pay for teachers based, in part, on evaluations conducted under a policy that is based on a framework for teacher evaluations that has been recommended by the Superintendent of Public Instruction and adopted by the State Board of Education.

Public employee benefits

- Limits public employer contributions toward health care benefit costs to 85%.

- 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.

- 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.

- Requires boards of education to adopt policies to provide leave with pay for school employees and abolishes statutorily provided leave for those employees.

- Abolishes continuing contracts for teachers, except for those continuing contracts in existence prior to the effective date of the act and revises the law relating to limited contracts.

- Prohibits a public employer from paying employee contributions to the five public employee retirement systems.

- Requires death benefits paid under the Police and Fire Pension Fund to be paid in accordance with salary schedules and increases that were in existence prior to the effective date of the act.

- Caps vacation leave for certain public employees at 7.7 hours per biweekly pay period and limits total accrual for those public employees currently accruing 9.2 hours per pay period.

- Reduces sick leave accrual for most public employees from 4.6 hours to 3.1 hours per biweekly pay period.

Reduction in force

- Removes consideration of seniority and length of service, by itself, from decisions regarding a reduction in work force of certain public employees.

Ohio Commission for Excellence in Public Service

- Creates the Ohio Commission for Excellence in Public Service to establish and guide programs that foster best practices in public service workplaces.

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CONTENT AND OPERATION

The Public Employees' Collective Bargaining Law

Prohibition against strikes

The act prohibits "public employees" (see "**Ability to bargain**," below, for a definition of "public employee") and employee organizations (essentially, unions) from striking and prescribes penalties for violating this prohibition. Under the act, an employee who is absent from work without permission or who abstains wholly or in part from the full performance of the employee's duties in the employee's normal manner without permission, on the date when a strike occurs, must be presumed to have engaged in the strike on that date.[1]

Previously, certain public employees could strike under limited circumstances. If an unauthorized strike occurred (essentially, those public employees struck outside of those circumstances, or if other public employees under the Public Employees' Collective Bargaining Law (PECBL) who were not permitted to strike actually struck), the employees were subject to penalties. Additionally, previously a public employer could obtain an injunction to stop a strike.[2]

[1] R.C. 4117.01(B), 4117.15(A), (C), and (L), and 4117.18(C).

[2] R.C. 4117.01(I), 4117.14(D), 4117.15, 4117.16 (repealed), and 4117.23 (repealed).

The act also prohibits any public employee or any employee organization from causing, instigating, encouraging, or condoning a strike. Additionally, the act prohibits any person exercising on behalf of any public employer any authority, supervision, or direction over any public employee from having the power to authorize, approve, condone, or consent to a strike, or the engaging in a strike, by one or more public employees, and the act prohibits that person from authorizing, approving, condoning, or consenting to the strike or engagement.[3]

Under the act, in the event that it appears that a violation of the (1) prohibition against strikes, (2) prohibition against causing, instigating, encouraging, or condoning a strike, or (3) prohibition against certain persons authorizing or condoning a person to strike or engage in a strike may have occurred, the chief executive officer of the public employer involved must, on the basis of an investigation and affidavits as the chief executive officer may deem appropriate, determine whether or not a violation has occurred and the dates of the violation. If the chief executive officer determines that a violation has occurred, the chief executive officer must also determine, on the basis of any further investigation and affidavits as the chief executive officer may deem appropriate, the names of employees who committed the violation and the dates thereof. The determination is not final until the completion of the procedures provided for in the act.

Next, the chief executive officer must immediately notify each employee that the chief executive officer has been found to have committed the violation, the dates of the violation, and that the employee has the right to object to the determination as described under "**Objections by employee**" below. Notice to each employee must be by personal service or by certified mail to the employee's last address filed by the employee with the employer. Also, the chief executive officer must also notify the chief fiscal officer of the public employer of the names of all the employees determined to have violated these prohibitions and of the total number of days, or portions thereof, on which it has been determined that the violation occurred.[4]

Penalties for striking

Under the act, any person who violates the prohibition against striking or the prohibition against causing, instigating, encouraging, or condoning a strike may be subject to removal or other disciplinary action provided by law for misconduct, which is similar to the prior law penalties for unauthorized strikes. Under continuing law, no

[3] R.C. 4117.15(A) and (D).

[4] R.C. 4117.15(E) and (F).

public employee is entitled to pay or compensation from the public employer for the period engaged in any strike.

Additionally, under the act, not earlier than 30 days or later than 90 days following the date of the determination made that a person has violated any of the prohibitions described in (1) to (3) under "**Prohibition against strikes**" above, the chief fiscal officer of the public employer involved must deduct from the compensation of each such public employee an amount equal to twice the employee's daily rate of pay for each day or part thereof that the chief executive officer determined that the employee committed a violation. This penalty is similar to one of the penalties assessed under prior law for unauthorized strikes. The employee's daily rate of pay is the employee's rate of pay at the time of the violation. In computing the deduction, the chief fiscal officer must allow credit for amounts already withheld from an employee's compensation on account of the employee's absence from work or other withholding of services on the dates of the violation. In computing the 30-day to 90-day period of time following the determination of a violation if the employee's annual compensation is paid over a period of time that is less than 52 weeks, the chief fiscal officer must not count that period of time between the last day of the last payroll period of the employment term in which the violation occurred and the first day of the first payroll period of the next succeeding employment term. [5]

Objections by employee

Within 20 days after the date on which notice was served or mailed to an employee, the employee determined to have committed the violation may object to the determination by filing with the chief executive officer the employee's sworn affidavit, which must contain a short and plain statement of the facts upon which the employee relies to show that the determination was incorrect and which must be supported by available documentary proof. An employee who submits an affidavit is subject to the penalties of perjury.

If the chief executive officer determines that the affidavit and supporting proof establishes that the employee did not violate any of the prohibitions described in (1) to (3) under "**Prohibition against strikes**" above, the chief executive officer must sustain and dismiss the objection and so notify the employee.

If the chief executive officer determines that the affidavit and supporting proof raises a question of fact that, if resolved in favor of the employee, would establish that the employee did not violate any of the prohibitions described in (1) to (3) under "**Prohibition against strikes**" above, the chief executive officer must appoint a hearing

[5] R.C. 4117.15(B), (G), and (K).

officer to determine whether in fact the employee did violate any of those prohibitions. The employee bears the burden of proof at the hearing. If the hearing officer determines that the employee failed to establish that the employee did not violate any of those prohibitions, the chief executive officer must so notify the employee.

If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that the employee did not violate any of the prohibitions described in (1) to (3) under "**Prohibition against strikes**" above, the chief executive officer must immediately notify the chief fiscal officer who must cease all further deductions and refund any deductions previously made pursuant to the act.

The determinations regarding whether a person violated any of the prohibitions described in (1) to (3) under "**Prohibition against strikes**" above are reviewable pursuant to Ohio's Administrative Procedure Act. The act prohibits any public employer, the State Employment Relations Board (SERB), or any court of competent jurisdiction from waiving the penalties or fines assessed regarding a violation of any of those prohibitions as part of the settlement of an illegal strike.[6] Thus, it appears that these penalties could be in addition to any penalties permitted under continuing law for engaging in an unfair labor practice by inducing or encouraging an individual to strike.[7]

Injunctions to stop strikes and notification of chief legal officer

Whenever a strike occurs, the public employer may seek an injunction against the strike in the court of common pleas of the county in which the strike is located. Under continuing law, an unfair labor practice by a public employer is not a defense to the injunction proceeding.[8]

Where it appears that public employees or an employee organization threaten or are about to violate any of the prohibitions described in (1) to (3) under "**Prohibition against strikes**" above by engaging in a strike, the chief executive officer must immediately notify the chief legal officer of the public employer involved and provide the chief legal officer with any facilities, assistance, or data as will enable the chief legal officer to carry out the chief legal officer's duties.[9]

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[6] R.C. 4117.15(B), (H), and (I).

[7] R.C. 4117.11(B)(5) and 4117.12.

[8] R.C. 4117.15(A) and (J).

[9] R.C. 4117.27.

Ability to bargain

Supervisors and management level employees

The act potentially restricts the ability of some people to collectively bargain. Under continuing law, public employees under the PECBL have the right to collectively bargain with their public employers, and those public employers must bargain with those employees. A public employee generally is any person holding a position by appointment or employment in the service of a public employer, but numerous exceptions exist. Under continuing law, a public employer may elect to bargain with a group that falls under these exceptions (other than county board of election employees), but is not required to bargain. One exception is that "public employee" does not include supervisors. Supervisors generally are individuals who have authority to take certain actions regarding the terms and conditions of employment of other public employees, if the exercise of that authority is not of a merely routine or clerical nature but requires independent judgment. With regard to members of a police or fire department, prior law specified that no person could be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, were authorized to exercise the authority and perform the duties of the chief of the department. The act removes that limitation, so more people may be deemed supervisors under the law, and thus cannot collectively bargain with their public employer unless the public employer elects to do so. Additionally, the act expressly states that the term "supervisor" includes "fire supervisory officers."

The act also changes who is considered a "supervisor" or a "management level employee" with respect to faculty at a state institution of higher education. With respect to faculty members, heads of departments or divisions are supervisors under continuing law, and the act adds that any faculty member or group of faculty members that participate in decisions with respect to courses, curriculum, personnel, or other matters of academic or institutional policy are supervisors or management level employees. Previously, these faculty members were not considered supervisors or management level employees.

A management level employee, under continuing law, generally is an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration. Like supervisors, a public employer may elect, but is not required to, collectively bargain with management level employees. The act expands the definition of "management level employee" to include any faculty who, individually or through a faculty senate or like organization, participate in the governance of the institution, are

involved in personnel decisions, selection or review of administrators, planning and use of physical resources, budget preparation, and determination of educational policies related to admissions curriculum, subject matter, and methods of instruction and research.[10]

Charter school employees

Under the act, community (charter) school employees do not have collective bargaining rights, and the act prohibits a community school from bargaining collectively with its employees. Employees of a conversion community school continue to have collective bargaining rights only if the community school elects to collectively bargain under continuing law procedures. Previously, community schools were required to bargain with their employees.[11]

Other employees

The act adds employees of a regional council of government to the list of public employees with whom a public employer may elect, but is not required to, collectively bargain. Additionally, the act expands that list of employees to include (1) certain clerical and administrative support employees in the unclassified civil service for each of the elective state officers, for each board of county commissioners and one such employee for each county commissioner, and for other elective officers and each of the principal appointive executive officers, boards, or commissions, except for civil service commissions, that are authorized to appoint such clerical and administrative support employees and (2) certain state and county employees who have a fiduciary or administrative relationship with their employer, rather than just those members of the unclassified civil service who act in a fiduciary capacity.

The act eliminates from the definition of "public employee" any person working pursuant to a contract between a public employer and a private employer and over whom the National Labor Relations Board has declined jurisdiction on the basis that the involved employees are employees of a public employer. The act removes this inclusion, thus it appears that this group of employees will no longer have collective bargaining rights.[12]

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[10] R.C. 4117.01(C)(10), (F), and (K).

[11] R.C. 3314.10, 4117.01(B)(1)(e) and (2), 4117.03(B), and 4117.06(C)(7).

[12] R.C. 4117.01(C).

Rights of public employees under the PECBL

The act removes the right of public employees to bargain collectively with their public employers to determine the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Public employees still have the right to bargain collectively to determine wages, hours, and terms and conditions of employment and to enter into collective bargaining agreements.[13] Previously, the PECBL used various forms of the phrase of "wages, hours, and terms and other conditions of employment." The act changes the phrase to "wages, hours, and terms and conditions of employment" throughout that law.[14]

Under continuing law, a public employee has the right to refrain from joining an employee organization, and a public employer is prohibited from agreeing to a provision requiring that a public employee become a member of an employee organization as a condition for securing or retaining employment. The act further states that any agreement that purports that employees join any exclusive representative (the union selected to represent a group of employees) is void and unenforceable.[15]

Bargaining units and exclusive representatives

Bargaining unit

Under continuing law, SERB decides in each case the unit of employees appropriate for the purposes of collective bargaining. The act specifically requires SERB to decide the most appropriate unit, and eliminates SERB's ability to determine a unit to be the appropriate unit in a particular case, even though some other unit might also be appropriate.

Continuing law contains restrictions with respect to SERB's bargaining unit classifications. The act expands those restrictions to prohibit SERB, with respect to members of a fire department, from designating as appropriate a unit that includes rank and file members of the department with members who are of the rank of lieutenant or above. Any bargaining unit of a fire department that does not conform to this requirement on the act's effective date ceases to be an appropriate unit upon the expiration of the collective bargaining agreement covering that unit that is in effect on the act's effective date or three years after the act's effective date, whichever is earlier.

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[13] R.C. 4117.01(G), 4117.03(A)(4), and 4117.08(A).

[14] R.C. 4117.01, 4117.03, and 4117.08.

[15] R.C. 4117.03 and 4117.09(C).

Thereafter, SERB must designate the appropriate unit for the fire department in accordance with the act's requirements.[16]

Recognition procedures

Under continuing law, an employee organization becomes the exclusive representative of a bargaining unit in one of the following ways: (1) by being certified by SERB after a SERB-conducted election, or (2) through filing a request for recognition. Under the act, if an employer has filed a petition for election, the act prohibits SERB from certifying any exclusive representative without an election unless, under continuing law, SERB determines that a free and untrammelled election cannot be conducted because of the employer's unfair labor practices and that at one time the employee organization had the support of the majority of the employees in the unit.

The act limits the prior law restriction that SERB could not conduct an election in any appropriate bargaining unit within which a SERB-conducted election was held in the preceding 12-month period, nor during the term of any lawful collective bargaining agreement, to those agreements entered into before the act's effective date. Additionally, the act permits a petition for election to be filed with SERB no sooner than 120 days before the expiration date of any collective bargaining agreement or after the expiration date. Prior law limited the filing period to no sooner than 120 days but no later than 90 days before the expiration date. The act also removes the restriction that the petition can only be filed after the expiration date until the public employer and exclusive representative enter into a written agreement.

Under the act, no collective bargaining agreement entered into on or after the act's effective date can bar the conduct of an election or certification pursuant to a petition that is timely filed in accordance with the act.[17]

With respect to a request for recognition, the act extends the time period during which an employee can object to the certification of an employee organization as an exclusive representative from 21 days to 30 days. The act also requires SERB to investigate a request for recognition on the 31st day following the request, unless by the 30th day (extended from 21 days under prior law) following the request SERB receives any of the following under continuing law:

- A petition for election from the public employer;

[16] R.C. 4117.06.

[17] R.C. 4117.07.

- Substantial evidence based on, and in accordance with, SERB rules demonstrating that a majority of the employees in the described bargaining unit do not wish to be represented by the employee organization filing the request for recognition;

- Substantial evidence based on, and in accordance with, SERB rules from another employee organization demonstrating that at least 10% of the employees in the described bargaining unit wish to be represented by the other employee organization;

- Substantial evidence based on, and in accordance with, SERB rules indicating that the proposed unit is not an appropriate unit.

Under prior law, SERB was required to certify the employee organization that filed the request by the 22nd day after the request was filed unless SERB received the petition or evidence described above.

Regardless of the procedures described above, under continuing law a public employer cannot recognize an employee organization as an exclusive representative if a lawful written agreement, contract, or memorandum of understanding exists on the act's effective date (changed from the section's effective date under prior law) recognizing another employee organization or if the employee organization traditionally is the only representative of the unit. Under the act, nonexclusive or deemed certified recognition previously granted through an agreement or memorandum of understanding does not preclude SERB from doing any of the following:

- Determining an appropriate unit;

- If necessary, removing classifications from a bargaining unit under an existing nonexclusive contract, agreement, or memorandum of understanding;

- Holding an election to determine an exclusive representative for all those employees deemed a part of the appropriate unit.[18]

The act allows another employee organization, employees currently represented by the employee organization, or the public employer of the public employees to file a petition for decertification with the board that is supported by substantial evidence, based on and in accordance with rules adopted by SERB, demonstrating that at least

[18] R.C. 4117.05.

30% of the employees in the described bargaining unit support the petition. The petition may be submitted at any time subsequent to 120 days prior to the expiration of the collective bargaining agreement. Under continuing law, if a petition is filed by any employee or group of employees, or any individual or employee organization acting in their behalf, asserting that the designated exclusive representative is no longer the representative of the majority of employees in the unit, SERB must investigate the petition, and if it has reasonable cause to believe that a question of representation exists, provide for an appropriate hearing upon due notice to the parties. If after the hearing SERB determines that a question of representation exists, SERB conducts an election in accordance with continuing law procedures.[19]

Subjects for collective bargaining

Mandatory subjects of collective bargaining

As discussed under "**Rights of public employees under the PECBL**" above, the act eliminates the right to collectively bargain regarding the continuation, modification, or termination of an existing provision of a collective bargaining agreement. Under the act, any existing provision of a collective bargaining agreement that was modified, renewed, or extended from a prior collective bargaining agreement that does not concern wages, hours, and terms and conditions must not be a mandatory subject of collective bargaining and must not be subject to any impasse procedure without the mutual agreement of both the public employer and exclusive representative. The inclusion of a provision in a previous collective bargaining agreement cannot be used as a basis for the provision being determined to concern wages, hours, and terms and conditions.

The act expands the subjects that are inappropriate subjects for collective bargaining to include the following:

(1) Employer-paid employee contributions to any of the five public employee retirement systems (see "**Employee contributions to public employee retirement systems**" below);

(2) Health care benefits, except for the amount of the premium for which a public employer and the public employees of the public employer pays. The provision of health care benefits for which the employer is required to pay more than 85% of the cost is not an appropriate subject for collective bargaining. (See "**Health care benefits**," below.)

[19] R.C. 4117.05(C) and 4117.07.

(3) The privatization of a public employer's services or contracting out of the public employer's work;

(4) The number of employees required to be on duty or employed in any department, division, or facility of a public employer.

With respect to health care benefits, the act states that the provision of health care benefits for which the employer is required to pay more than 85% of the cost is not an appropriate subject for collective bargaining. The act prohibits any public employer from agreeing to a provision that requires the public employer to pay more than 85% of the cost paid for health care benefits. Under the act, any law pertaining to the provision of health care benefits to public employees prevails over conflicting collective bargaining agreements.[20]

Rights reserved to the public employer

The act eliminates the requirement that a public employer must collectively bargain on subjects reserved to the management and direction of the governmental unit that affect wages, hours, terms and conditions of employment and the continuation, modification, or deletion of an existing provision in a collective bargaining agreement. Under prior law, unless a public employer agreed otherwise in a collective bargaining agreement, the PECBL did not impair the right of the public employer to take specified actions. The act requires the public employer to specifically agree otherwise in an express written provision of a collective bargaining agreement to impair the right of the public employer to do any of the following:

- Hire, discharge, transfer, suspend, or discipline employees (similar to prior law);
- Determine the number of persons required to be employed or laid off (similar to prior law);
- 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;

[20] R.C. 4117.08(A), (B), and (E) and 4117.10, with conforming changes in R.C. 9.90 and 4117.03.

- Determine the basis for selection, retention, and promotion of employees;
- Determine the type of equipment used and the sequence of work processes, except as provided below;
- Determine the making of technological alterations by revising either process or equipment or both, except as provided below;
- 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;
- 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.[21]

Although the act limits the topics of collective bargaining as described above, under the act, equipment issues directly related to personal safety are subject to collective bargaining.[22]

Considerations during negotiations

During negotiations between a public employer and an exclusive representative, the act requires the parties to consider, for purposes of determining the ability of the public employer to pay for any terms agreed to during collective bargaining, only the financial status of the public employer at the time period surrounding the negotiations. When determining whether the employer can pay for those terms, the parties must consider the employer's inability to pay. The parties may not base the ability of the public employer to pay for those terms on either of the following:

[21] R.C. 4117.08(C).

[22] R.C. 4117.08(F).

(1) Any potential future increase in the income of the public employer that would only be possible by the employer obtaining funding from an outside source, including the passage of a levy or a bond issue;

(2) The employer's ability to sell assets.[23]

Provisions in and approval of agreements

Education provisions

The act prohibits a public employer that is a school district, educational service center, a conversion community school that engages in collective bargaining, or STEM school from entering into a collective bargaining agreement on or after the act's effective date that does any of the following:

(1) Requires the public employer to employ a minimum number of total personnel or any category of personnel;

(2) Restricts the authority of the public employer or a district or service center superintendent to assign personnel to school buildings or restricts the authority of a building principal to designate the responsibilities and workloads of personnel assigned to the building;

(3) Establishes a maximum number of students who may be assigned to a classroom or teacher;

(4) Prohibits the public employer from making reductions in teachers or nonteaching employees for specified reasons or adopted in an authorized policy;

(5) Restricts the authority of the public employer, when making personnel reductions, to determine the order of layoffs;

(6) Restricts the authority of the public employer to acquire noneducational services from another public or private entity through competitive bidding;

(7) Restricts the authority of the public employer to acquire any products, programs, or services from an educational service center under continuing law;

(8) Otherwise relinquishes, impairs, or restricts the managerial rights and responsibilities of the public employer.

[23] R.C. 4117.08(D).

The act requires a collective bargaining agreement entered into on or after the act's effective date between a public employer that is a school district, educational service center, a conversion community school that engages in collective bargaining, or STEM school and that public employer's employees to comply with all applicable state or local laws or ordinances regarding wages, hours, and terms and conditions of employment of public employees, except that the collective bargaining agreement may include a provision that conflicts with an applicable law or ordinance if the provision establishes benefits that are less than the benefits conferred by the law or ordinance and the law or ordinance has not been expressly deemed to prevail over the conflicting provision. The act declares void any provision of the agreement that conflicts and that does not fulfill the exception.

Under the act, a public employer described immediately above is not required to, and may refuse to bargain on the continuation, modification, or termination of a provision of an existing collective bargaining agreement.[24]

Fiscal watch or emergency

The act prohibits any agreement entered into under the PECBL on or after the act's effective date from prohibiting a public employer that the Auditor of State has declared to be 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. Additionally, the act prohibits any agreement entered into under the PECBL on or after the act's effective date from prohibiting a public employer that the Governor or Auditor of State has declared to be in a state of fiscal emergency or in the case of a state university or college, that a conservator has been appointed for, from serving a written notice to terminate, modify, or negotiate a collective bargaining agreement. If the public employer sends either of these notices, the parties may collectively bargain and enter into a new collective bargaining agreement pursuant to the procedures prescribed in the PECBL.

The act requires each agreement entered into under the PECBL on or after the act's effective date to contain a statement that the agreement may be terminated, modified, or negotiated as described immediately above.[25]

[24] R.C. 4117.081.

[25] R.C. 4117.104.

Fair share fees

The act prohibits an agreement from containing a provision that requires as a condition of employment that the employees in the unit who are not members of the employee organization pay to the employee organization a fair share fee.

Under prior law, a collective bargaining agreement between a public employer and employee organization could require, as a condition of employment, that any public employee who was in the bargaining unit but who was not a member of the employee organization pay a fair share fee. This fee was automatically deducted from the public employee's pay, but parts could be rebated for expenditures in support of partisan politics or ideological causes not germane to the work of the employee organization in collective bargaining. Also, those public employees who, on religious grounds, objected to joining or financially supporting an employee organization could pay an amount of money equal to the fair share fee to a charitable fund in lieu of the fair share fee. Because no employee can be required to pay a fair share fee under the act, the act removes these provisions.[26]

Grievance procedures, automatic deductions, and layoffs

The act limits the application of the grievance procedure required under continuing law to unresolved grievances that are based on the disputed interpretations of the express written provisions of the agreement. Previously, the grievance procedure addressed unresolved grievances and disputed interpretations of agreements.

The act also limits the continuing law requirement that an agreement contain a provision to authorize the public employer to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a written deduction authorization by the employee. The act permits this deduction to occur only if the employee organization has filed and maintained its financial report outlining the organization's expenditures as required under continuing law.

Under the act, no public employer may agree to a provision that provides for the payroll deduction for any contributions to a political action committee using any other method than the method prescribed in Ohio's Campaign Finance Law. Under that law, written authorization must be obtained from the employee before automatic deductions for certain political contributions may be made. This is consistent with the continuing Campaign Finance Law regarding these deductions, as that law already prevailed over conflicting agreements.

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[26] R.C. 4117.09(C), with conforming changes in R.C. 9.81 and 4117.11.

The act 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 an employee's length of service as the only factor to determine whether to lay off the employee.[27]

Privatization

As discussed under "**Mandatory subjects of collective bargaining**" above, the act eliminates privatization of a public employer's services or contracting out of the public employer's work as an appropriate subject of collective bargaining. The act further prohibits any agreement entered into or renewed under the PECBL on or after the act's effective date from containing any provision that in any way prohibits 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. Additionally, that agreement cannot contain any provisions that cause the public employer to do any of the following:

- Retain existing employees as employees of the public employer if their work is privatized or subcontracted to another entity;

- Pay any additional payments to employees who may be laid off as the result of such privatization or subcontracting, except for payments for accumulated time or leave credits that would normally be paid by the public employer to any other employee who is laid off for reasons other than the subcontracting or privatization of their work.

The act makes any provision inconsistent with these requirements contained in an agreement entered into or renewed on or after the act's effective date void and unenforceable.[28]

Leave accrual and pay out

The act prohibits a collective bargaining agreement entered into or renewed on or after the act's effective date 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;

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[27] R.C. 4117.09(B), (C), and (F), with reference to R.C. 3517.082, 3517.09, and 3599.031.

[28] R.C. 4117.105.

- 3 paid personal days annually.

For purposes of these determinations, "day" means eight working hours and "week" means 40 working hours for employees working a normally scheduled work week. Those employees working a work week that exceeds or is less than 40 hours must have the number of hours per day or week increased or reduced proportionately based on the difference in hours between the employee's average work week and 40 hours.[29]

The act also provides that no collective bargaining agreement that is modified, renewed, extended, or entered into on or after the act's effective date is permitted to provide vacation leave in an amount greater than that provided in statute, which caps vacation leave at 7.7 hours per biweekly pay period for employees with 19 or more years of service (see "**Vacation and sick leave**").[30]

The act prohibits a collective bargaining agreement entered into or renewed on or after the act's effective date 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. The payment must be based upon the public employee's hourly rate of pay at time of final retirement, unless the employee is a member of the Ohio Police and Fire Pension Fund and participates in the Deferred Retirement Option Plan (DROP). For that type of employee, the payment must be based upon the public employee's hourly rate in effect at the time the employee entered DROP.

For purposes of this provision, "final retirement" means when an employee retires and is immediately eligible to receive pension benefits by satisfying the normal length of service and age qualifications or as a result of disability.[31]

Restrictions for DROP participants

The act also includes limitations with respect to DROP as administered by the Ohio Police and Fire Pension Fund. The act prohibits any agreement entered into or renewed under the PECBL on or after the act's effective date from containing any provisions that do any of the following:

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[29] R.C. 4117.108.

[30] R.C. 124.134(F).

[31] R.C. 4117.109.

- Provide for any supplemental wage payments based on length of employment to any employee participating in DROP;

- Provide for any annual paid vacation leave earning in excess of five weeks to any employee participating in DROP;

- Provide for the ability of any employee participating in DROP to carry over vacation leave from one year to another that exceeds a total accumulation of the equivalent of three years vacation leave;

- Provide the basis for the payment to any employee participating in DROP of any accumulated paid leave that is based on an employee's hourly wage rate greater than the employee's wage rate on the date the employee commenced participating in DROP.

The act requires the Ohio Police and Fire Pension Fund to notify the public employer of the respective employee of the date upon which the employee entered DROP and to notify the public employer of the date any employee entered DROP prior to the act's effective date.[32]

Other provisions

The act also prohibits a collective bargaining agreement entered into or renewed on or after the act's effective date 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, except that an agreement may contain provisions regarding certain equipment issues in accordance with "**Rights reserved to the public employer**," above;

- Provides for the public employer to pay any portion of a public employee's state pension contributions or payments as described under "**Mandatory subjects of collective bargaining**," above;

- Provides for an hourly overtime payment rate that exceeds the overtime rate required by the federal Fair Labor Standards Act.

[32] R.C. 4117.107.

- 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.

The act makes any provision inconsistent with the requirements listed above that is contained in an agreement entered into or renewed on or after the act's effective date void and unenforceable.[33]

Agreement approval

The act extends the date by which the public employer must submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body to 30 days after the agreement is finalized, rather than 14 days under prior law, unless otherwise specified. If the appropriate legislative body is not in session at the time, then under continuing law the public employers must submit the request within 14 days after the legislative body convenes.[34]

Supervisor pay

The act prohibits compensation of a supervisor who is not a member of an employee organization from being automatically tied to the compensation negotiated in a collective bargaining agreement that applies to other public employees of the public employer that employs the supervisor.[35]

Dispute resolution procedures

The act makes several changes to the procedures that govern the settlement of disputes between an exclusive representative and a public employer concerning collective bargaining agreements.

Duty to bargain

The act removes any requirement that the public employer and exclusive representative collectively bargain on the continuation, modification, or termination of a provision of an existing agreement. The act specifically allows the parties to refuse to collectively bargain on these issues under the same circumstances. Continuing law requires the parties to enter into collective bargaining under all other circumstances

[33] R.C. 4117.106.

[34] R.C. 4117.10(B).

[35] R.C. 4117.10(D).

upon receiving a written notice from the other party of the proposed termination, modification, or successor agreement.

The act also extends the timeline for initial negotiations. Under the act, parties negotiating an initial agreement must offer to meet for a period of 120 days, increased from 90 days under prior law, for purposes of negotiating an agreement.

The act also specifically requires, with respect to parties that have an existing agreement, that the parties, not less than 105 days prior to the existing agreement's expiration date, offer to bargain collectively with the other party for the purpose of modifying or terminating any existing agreement or negotiating a successor agreement and notify SERB of the offer by serving upon SERB a copy of the written notice to the other party and a copy of the existing collective bargaining agreement. While these actions are required under continuing law, prior law did not include timelines for the actions to occur. The act also requires these parties to continue in full force and effect all the terms and conditions of any existing collective bargaining agreement for a period of 105 days, increased from 60 days under prior law, after the party gives notice or until the agreement's expiration date, whichever occurs later.[36]

Mediation

The act eliminates the ability of the parties to submit disputed issues to a mutually agreed-upon dispute resolution procedure. Under prior law, if at any time prior to 45 days before an existing agreement expired the parties could not reach an agreement, the parties could agree to submit the dispute to agreed-to dispute resolution procedures such as conventional arbitration or a conciliator's council.

The act also changes the prior law timelines to request SERB to intervene and for SERB to appoint a mediator. Thus, under the act, if the parties are unable to reach an agreement 75 days before the collective bargaining agreement expires, changed from 50 days under prior law, any party may request SERB to intervene. Under continuing law the request must set forth the names and addresses of the parties, the issues involved, and, if applicable, the expiration date of any agreement. SERB then must intervene and investigate the dispute to determine whether the parties have engaged in collective bargaining. If an impasse exists or 70 days before the expiration date of the agreement, changed from 45 days under prior law, SERB also must appoint a mediator to assist the parties in the collective bargaining process.[37]

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[36] R.C. 4117.14(B).

[37] R.C. 4117.14(C) and (E) (repealed).

Fact-finding

Under the act, similar to prior law, any time after a mediator is appointed, a party may request the appointment of a fact-finder, instead of a fact-finding panel under prior law. The act also requires, if no agreement exists 45 days before the expiration of the collective bargaining agreement if one exists, SERB to appoint a fact-finder. The act requires the fact-finder to be appointed pursuant to the same procedures as a fact-finding panel under prior law, and the fact-finder operates in a similar manner as a fact-finding panel, which is similar to advisory arbitration.

In making the fact-finder's findings of fact and recommendations, the act requires a fact-finder to take all of the following factors into account, many of which are the same factors a fact-finding panel or conciliator was required to take into account under prior law:

(1) As the primary consideration, the interests and welfare of the public and the ability of the public employer to pay for and administer the issues proposed, consistent with the requirements described under "**Considerations during negotiations**" above (similar to prior law, except prior law did not require this to be the "primary factor" or those considerations to be taken into account);

(2) Past collectively bargained agreements, if any, between the parties (same as prior law);

(3) Comparison of the issues submitted to fact-finding relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved (same as prior law);

(4) The lawful authority of the public employer (same as prior law);

(5) The stipulations of the parties (same as prior law);

(6) The compensation paid by the public employer to the public employer's public employees who are not members of the bargaining unit represented by the exclusive representative or who are members of that bargaining unit but are not members of the exclusive representative;

(7) The effect of the recommendations on the public employer's employer-wide collective bargaining program and practices, and the potential increases in cost to the public employer;

(8) Such other factors, not confined to those listed in (1) to (7) above, that are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment (same as prior law).

The act permits fact-finding hearings to be open to the public if either party requests. The fact-finder's finding of fact and recommendations on the unresolved issues must be sent to the public employer, the employee organization, and SERB no later than 15 days prior to the date the collective bargaining agreement expires (changed from 14 after the panel is appointed as under prior law). The act requires the fact-finder to include with its findings of fact and recommendations a written report explaining how each of the factors described in (1) to (8) immediately above factored into the panel's findings and recommendations.[38]

Final resolution

The act changes the timeline for the parties to vote regarding the fact-finder's findings of fact and recommendations from 7 to 15 days after the findings and recommendations are sent or after the collective bargaining agreement expires, whichever occurs earlier. The act decreases the amount of the vote necessary to reject the findings and recommendations to a majority of the membership of the legislative body or the total membership of the employee organization from three-fifths of the respective memberships under prior law. Under continuing law, if neither party rejects the recommendations, the recommendations constitute the final resolution of the disputed issues and a collective bargaining agreement must be executed between the parties. However, if either party rejects the findings and recommendations, SERB must publicize the findings and recommendations.

If either party rejects the findings and recommendations, then previously at this point in the process, those parties who were permitted to strike could do so in accordance with prior law procedures. Those who were not permitted to strike (see "**Background – employees who are not permitted to strike**," below) were required to submit the dispute to final offer settlement procedure (commonly referred to as binding arbitration), during which a conciliator chose between the issues submitted by the parties. The act, however, generally prohibits public employees from striking (see "**Prohibition against strikes**" above) and also eliminates the final offer settlement procedure.

[38] R.C. 4117.14(C)(1) to (3) and 4117.21, with conforming changes in R.C. 4117.02.

Under the act, if the parties are unable to reach agreement within five days after the publication of findings and recommendations from the fact-finder or within five days after the collective bargaining agreement, if one exists, has expired, then the chief executive officer of the public employer involved must submit to the legislative body of the public employer a copy of the public employer's last best offer, and the exclusive representative must submit the exclusive representative's last best offer. For purposes of this provision, "legislative body" means any of the following:

- With respect to the state or any agency, authority, commission, or board of the state, the Controlling Board;
- With respect to a state institution of higher education, the board of trustees of the institution;
- With respect to public employees who are members of an exclusive nurses unit and who are employed by a hospital, the board of trustees of the hospital.

After receiving the required submissions, the legislative body or a duly authorized committee of the legislative body must conduct a hearing, within 15 days after the date the collective bargaining agreement expires, at which the parties must be required to explain their positions with respect to the report of the fact-finder. After receipt of the submissions and prior to the hearing, the legislative body must have the chief financial officer of the legislative body determine which last best offer costs more. The chief financial officer must certify the results of the determination to the legislative body. The legislative body must hold the hearing open to the public and must not deem the hearing an executive session of the legislative body. Upon the conclusion of the hearing, the legislative body must vote, within 15 days after the date the collective bargaining agreement expires, to accept either the last best offer of the exclusive representative or the last best offer of the public employer. Similar to prior law, increases in rates of compensation and other matters with cost implications may be effective only at the start of the fiscal year next commencing after the date of the decision of the legislative body; provided that if a new fiscal year has commenced since the submission to the legislative body for a decision, the awarded increases may be retroactive to the commencement of the new fiscal year. The parties must execute a collective bargaining agreement that represents the last best offer chosen by the legislative body and that agreement must be effective for a term of three years.

If, by reason of a tie vote, or for any other reason, the legislative body does not accept either last best offer within 15 days after the date the collective bargaining

agreement expires, then the public employer's last best offer becomes the agreement between the parties, and that agreement must be effective for a term of three years.[39]

Voter approval

With respect to an agreement involving a public employer that has a defined geographic area located within Ohio that is not the state, a state institution of higher education, or a public employer that does not have a defined geographic area within Ohio, the act requires, within three days after the legislative body selects a last best offer as described under "**Final resolution**" above or the public employer's last best offer becomes the agreement due to the failure of the legislative body to make a selection as described above, as applicable, the chief financial officer of the legislative body of the public employer to determine whether sufficient revenues exist to cover the agreement.

If the legislative body selects the last best offer that the chief financial officer determines costs more and if the chief financial officer determines that insufficient funds exist or refuses to make the determination required immediately above, either party to the agreement or any constituent who resides within the geographical area of the public employer that is a party to the agreement may submit the last best offer from each party that was submitted to the legislative body to the electors in accordance with the act. The party or constituent must submit to the board the signatures of either 5% of the number of electors within that area that voted in the most recent gubernatorial election or 100 electors who reside in the geographic area, whichever is greater. The petition for collecting the signatures must include a summary of each last best offer. The signatures must comply with the continuing law requirements concerning petitions. The signatures must be submitted not later than 75 days prior to the date of the election described below. If the petition contains the required number of signatures, the board must submit the last best offers to the electors.

During the time period between the date that the question is required to appear on the ballot and the date the board certifies the results of the election, the parties must implement the provisions of the public employer's last best offer.

If the last best offers are required to be submitted to the electors under the act, the board must place the following question on the ballot at the next succeeding general election or at a special election on the day of the next succeeding primary election in any year occurring subsequent to 75 days after the petition is filed:

[39] R.C. 4117.14(C)(4) and (D).

"Vote for not more than one:

The union's labor contract proposal

The (name of public employer) labor contract proposal"

The act requires each party to the agreement to prepare a summary of their respective last best offers, and the board must include those summaries in the ballot language. The summaries must be filed with the appropriate board of elections not later than 65 days before the date of the election. No summary is permitted to exceed 300 words.

Under the act, only electors who reside within the jurisdiction of the public employer are eligible to vote on the issue. The board must place a copy of each last best offer at each polling location at which the electors vote on the issue. Additionally, the legislative body must post on the web site of the legislative body the full text of each last best offer submitted to the legislative body.

The act requires notice of the election to be published in a newspaper of general circulation in the applicable voting area once a week for two consecutive weeks prior to the election, and if the board of elections maintains a web site, the board must post notice of the election on the web site for 30 days prior to the election. Each notice must contain the summaries prepared by the parties.

Under the act, the election must be conducted, canvassed, and certified in the same manner as regular elections. The last best offer receiving a majority of the votes cast in the election must become the agreement of the parties. The act requires the parties to enter into the agreement in accordance with the last best offer upon certification by the board of the results of the election. The public employer and exclusive representative must be subject to the last best offer selected by the electors for three years after the date the results of the election are certified.

The act requires any agreement entered into under the PECBL on or after the act's effective date by a public employer that is subject to the voter approval procedure to contain a provision that states that the agreement may be subject to approval of the voters as described above.[40]

Publication requirements

The act requires SERB and public employers to post in a conspicuous location on the web site maintained by SERB or the employer, respectively, the terms of the last

[40] R.C. 4117.141.

collective bargaining agreement offered by the public employer and the terms of the last collective bargaining agreement offered by the exclusive representative at specific times. When SERB appoints a mediator, then SERB and the employer must promptly post. If a fact-finder is appointed, then SERB and the employer must promptly post.[41]

Unfair labor practices

The act expands the continuing law list of actions that constitute an unfair labor practice by an employee organization, its agents, or representatives, or public employees to include both of the following:

- Inducing or encouraging any individual to engage in a secondary boycott whether under the existing agreement or as part of another employee organization's concerted activity, whether in the public or private sector;

- Insisting that a permissive subject of collective bargaining be bargained to impasse.

The act makes striking or other concerted refusal to work an unfair labor practice. Previously, those activities were an unfair labor practice only if the employee organization or public employees failed to provide the required notice.

Under the act, expression of any views, argument, or opinion, or the dissemination of any of those items, whether in written, printed, graphic, or visual form, cannot constitute or be evidence of a public employer's or an employee organization's engagement in an unfair labor practice under the PECBL if the expression contains no threat of reprisal or force or promise of benefit.[42]

A party may file a charge with SERB in the event of an unfair labor practice. Under continuing law, the charged party may file an answer to an original or amended complaint. Under the act, the failure to file or timely file an answer must not be construed as any admission against the non-responding party, and the party may present its response or challenge to the charge at any time prior to the hearing. The act also makes the charging party or the charging party's representative a party to a hearing and allows the charging party or representative to appear or otherwise give evidence, in addition to SERB agents and the person charged under continuing law.

Under continuing law, a SERB member or administrative law judge who conducts a hearing must issue a proposed decision and submit it to SERB. The act

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[41] R.C. 4117.14(C).

[42] R.C. 4117.11(B) and (C).

eliminates the requirement that if the parties file no exceptions within 20 days after service of the proposed decision, the recommended order becomes the order of SERB effective as prescribed in the decision. If the parties file an exception, the act permits SERB to consider any issues raised by a party. Under continuing law, SERB determines based upon the preponderance of the evidence whether an unfair labor practice occurred and if so, may order remedies.

In addition to continuing law remedies for an unfair labor practice, if SERB determines that any of the following unfair labor practices have occurred, SERB must order the suspension of the payment of dues or fees to the employee organization for the greater of 30 days or two times the duration of the illegal activity:

- An employee organization, its agents, or a public employee called, instituted, maintained, or conducted a boycott against any public employer, or picketed any place of business of a public employer, on account of any jurisdictional work dispute.

- An employee organization, its agents, or a public employee induced or encouraged any individual to do either of the following:

  - To engage in a strike in violation of the PECBL or refusal to handle goods or perform services;

  - To engage in a secondary boycott whether under the existing agreement or as part of another employee organization's concerted activity, whether in the public or private sector.

- An employee organization, its agents, or a public employee threatened, coerced, or restrained any person where an object thereof was to force or require any public employee to cease dealing or doing business with any other person, or force or require a public employer to recognize for representation purposes an employee organization not certified by SERB.

- An employee organization, its agents, or a public employee induced or encouraged any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer.

- An employee organization, its agents, or a public employee engaged in any striking or other concerted refusal to work.

One of the continuing law remedies for an unfair labor practice is reinstatement. However, a public employee cannot be reinstated if the suspension or discharge was for

just cause not related to public employee rights under the PECBL. The act expands this prohibition to restrict reinstatement if the predominant basis for the suspension or discharge was not related to public employee rights under the PECBL.[43]

Under continuing law any person aggrieved by any SERB final order granting or denying the relief sought may appeal to the court of common pleas of any county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or principally (as added by the act) transacts business. The act requires the court to immediately serve a copy of the notice of appeal filed to all of the other parties, not just to SERB as under prior law.[44]

Self-interest

The act prohibits a public official or employee from participating on behalf of a public employer in the collective bargaining process with respect to any matter in which the immediate family of the official or employee has a direct interest in the outcome of the matter. "Immediate family" is a spouse residing in the person's household and any dependent child.[45]

Employee compensation reports

Beginning with the first collective bargaining agreement entered into on or after the act's effective date between a public employer and an exclusive representative, and for each collective bargaining agreement entered into after that time, the act requires the public employer to submit a report to SERB concerning compensation paid to employees under the collective bargaining agreement. The report must list all of the following:

(1) Each provision in the collective bargaining agreement that affects the compensation paid by the public employer to its public employees;

(2) A description of the changes in compensation paid to the public employer's public employees that are not addressed in the collective bargaining agreement but will occur during the time period the collective bargaining agreement is in effect;

(3) Any material terms of the agreement.

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[43] R.C. 4117.12.

[44] R.C. 4117.13.

[45] R.C. 4117.20(B) and R.C. 102.01(D), not in the act.

The act defines "compensation" as wages, salary, and other earnings paid to a public employee by reason of employment. "Compensation" includes all of the following that are provided by a public employer to a public employee: (1) allowances for food or drink, (2) allowances or stipends for clothing, (3) compensation in addition to base salary for labor performed or services rendered by the public employee, including any additional compensation paid for attending an event that occurs outside the public employee's normal work schedule, (4) payments for length of service, (5) allowances for dry cleaning services, (6) insurance coverage, including health insurance, vision insurance, dental insurance, disability insurance, or life insurance, and (7) anything of value given to a public employee by a public employer for labor performed or services rendered by the public employee that is not generally offered to any of the public employer's employees that are not subject to a collective bargaining agreement, unless they are de minimis.

The employer must submit the required report to SERB within 30 days after entering into the collective bargaining agreement. In that same time, the employer also must post a copy of the report in a conspicuous manner on the employer's web site. SERB also must post a copy of the report in a conspicuous manner on its web site upon receipt of the report.

If a public employer does not maintain a web site, then the public employer must provide copies of the report to two newspapers of general circulation, in the county in which the public employer is located. If the public employer is located in more than one county, then the public employer must provide copies of the report to newspapers of general circulation in Cincinnati, Cleveland, Columbus, and Toledo.

If a change in compensation is to occur during the time period a collective bargaining agreement is in effect and that change was not included in the report submitted to SERB, or if the public employer and exclusive representative enter into a modified collective bargaining agreement during that time period, the public employer must submit an updated report to SERB not less than five days before the change is to take effect. The employer also must post the updated report in a conspicuous manner on its web site not less than five days before the change is to take effect. Upon receiving the updated report, SERB must post a copy of the report in a conspicuous manner on its web site as well.[46]

[46] R.C. 4117.26.

Liberally construe

The act repeals the requirement that the Public Employee Collective Bargaining Law be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees.[47]

Effect on existing contracts

Under the act, the amendments to the PECBL by the act apply to a collective bargaining agreement entered into on or after the act's effective date and to versions of a collective bargaining agreement in effect on the act's effective date that result from extension, modification, or renewal of the collective bargaining agreement on or after that date. Additionally, nothing in the act is to be construed as applying to a collective bargaining agreement entered into under PECBL that exists on the act's effective date.[48]

Public employee pay

Performance-based pay and elimination of steps

The act requires performance-based pay for most employees of the state, its political subdivisions, school districts, and board and commission members. With regard to exempt state employees, other state employees who are subject to the job classification plan established by the Director of Administrative Services but who are not subject to a collective bargaining agreement who are subject to the Department of Administrative Services Personnel Law, part-time state employees, and board and commission members (unless compensation for the board or commission member is otherwise specifically provided in law), specifically, and other persons by reference, the act replaces pay ranges and step values provided in statute with pay ranges that must be established or modified in rules adopted by the Director of Administrative Services. The Director also must adopt rules to develop a performance pay system.[49]

The act also requires pay under other salary schedules to be based on performance. Under continuing law, some salary schedules do not exist in statute but are established by different governing authorities with statutory authority. In those cases, the act retains the duty of the governing authority to establish pay schedules for employees, but requires that pay under those schedules and progression through the same be based upon performance. Additionally, unless otherwise provided, if an appointing authority (the officer, commission, board, or body having the power of

[47] R.C. 4117.22 (repealed).

[48] Section 4.

[49] R.C. 124.15 and 124.152; see also R.C. 122.40, 122.72, and 124.14.

appointment to, or removal from, positions in any office, department, commission, board, or institution) is authorized by the Revised Code to fix the wage or salary of a public employee without reference to the Department of Administrative Services Personnel Law or other parameters, the appointing authority must fix the public employee's wage or salary based on performance in accordance with the rules the Director adopts.[50]

For example, the act specifically requires performance-based pay for the following persons (this list is not exhaustive):

- Any state employee whose position the Director has determined is impracticable to include in the state job classification plan;[51]
- Correctional Institution Inspection Committee staff, excluding the Director;[52]
- Assistants appointed by the Attorney General;[53]
- Employees of the Department of Development, Division of Economic Development;[54]
- Members of the Development Financing Advisory Council and Minority Development Financing Advisory Board, respectively;[55]
- Employees of each county board of developmental disabilities;[56]
- Employees of the board of trustees of a joint emergency medical services district.[57]

[50] R.C. 103.74, 122.64, 307.054, 339.06, 339.07, 340.04, 505.38, 505.49, 749.082, and 749.083.

[51] R.C. 124.14(H).

[52] R.C. 103.74.

[53] R.C. 109.33.

[54] R.C. 122.64.

[55] R.C. 122.40 and 122.72.

[56] R.C. 5126.24.

[57] R.C. 307.054(C).

For purposes of determining the performance of an employee who is a member of a police department or police district or who is a trooper in the State Highway Patrol, the act prohibits the employer from considering the number or type of citations that the employee issues.[58]

Pay supplements for certain state employees

The act removes a pay supplement provision that was formerly available to certain public employees. The removed provision applied, as do most of the other pay supplement provisions that were retained by the act, to employees paid in accordance with Schedule B of the nonexempt employee salary schedule or Schedule E-1 or Schedule E-1 for Step 7 only of the exempt employee salary schedule. The removed provision made available to those employees an automatic, annual salary adjustment after five years of service with the state or any of its political subdivisions.[59]

The remaining pay supplement provisions that continue to be available to employees who are paid in accordance with the schedules for exempt employees or for employees subject to the state job classification plan include a special hazard salary adjustment, pay for returning to work after termination of the employee's regular work schedule, a pay supplement to attract bilingual employees, shift differential, long-term higher level work, a professional achievement pay supplement, and an educational pay supplement.[60]

The act retains the authority of a state agency, board, or commission to give supplementary compensation to a licensed physician in its employ but the schedule for the supplementary compensation must be based upon performance.[61]

Teacher pay

Performance-based pay

The act eliminates the salary schedules and steps in place for teachers and nonteaching employees and instead requires teachers to receive performance based pay. The act requires a board to measure a teacher's performance by considering all of the following:

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[58] R.C. 124.14(H) and (J) and 505.49.

[59] R.C. 124.181(A) and (E); see also R.C. 124.134, 124.15, and 124.34.

[60] R.C. 124.181.

[61] R.C. 124.181(L).

(1) The level of license (a resident educator license, professional educator license, senior professional educator license, or lead professional educator license) that the teacher holds;

(2) Whether the teacher is a "highly qualified teacher" as defined in continuing law;

(3) The value-added measure the board uses to determine the performance of the students assigned to the teacher's classroom;

(4) The results of the teacher's performance evaluations or any peer review program created by an agreement entered into by a board of education and representatives of teachers employed by that board;

(5) Any other criteria established by the board.[62]

Performance evaluations

The evaluation on which a teacher's pay must be based is a new evaluation under the act. No later than April 30, 2012, the Superintendent of Public Instruction must develop and submit recommendations for a framework for teacher evaluations to the State Board of Education. The recommended framework must require all of the following:

(1) At least 50% of each evaluation must be based on measures of student academic growth specified by the Department of Education. When applicable to a teacher, those measures must include student performance on the assessments prescribed under continuing law and the value-added progress dimension prescribed under continuing law.

(2) Each evaluation must consider the following additional factors, but the recommendations cannot designate the weight of any factor or prescribe a specific method of assessing any factor:

(a) Quality of instructional practice, which can be determined by announced and unannounced classroom observations and examinations of samples of work, such as lesson plans or assessments designed by the teacher;

[62] R.C. 3317.13, with conforming changes in R.C. 3306.01, 3313.42, 3317.01, 3317.11, 3319.08, 3319.085, 3319.088, 3319.10, 3319.11, 3319.14, 3319.18, and 5126.24, and R.C. 3317.12 and 3317.14 (repealed).

(b) Communication and professionalism, including how well the teacher interacts with students, parents, other school employees, and members of the community;

(c) Parent and student satisfaction, which may be measured by surveys, questionnaires, or other forms of soliciting feedback.

Also, no later than April 30, 2012, the Superintendent must develop and submit to the State Board recommendations for a framework for the evaluation of principals. The framework must require at least 50% of each evaluation to be based on measures of student academic growth specified by the Department. When applicable to the grade levels served by a principal's building, those measures must include student performance on specified assessments and value-added progress dimension. The framework for the evaluation of principals must be based on principles comparable to the framework for the evaluation of teachers but must be tailored to the duties and responsibilities of principals and the environment in which principals work.

The State Board must review the recommendations submitted at the Board's next regular meeting after the recommendations are submitted to the Board. At that meeting, the State Board must vote either to adopt the recommended frameworks for evaluations or to request that the Superintendent reconsider the recommendations. The State Board must articulate reasons for requesting reconsideration of the recommendations, but must not direct the content of the recommendations. The State Superintendent then must reconsider the recommendations if the State Board so requests, may revise the recommendations, and must resubmit the recommendations, whether revised or not, to the Board not later than two weeks prior to the Board's next regular meeting after the meeting at which the Board requested reconsideration of the recommendations. The State Board must review the recommendations as resubmitted at the Board's next regular meeting after the meeting at which the Board requested reconsideration of the recommendations and must adopt the recommended frameworks for evaluations as resubmitted or, if the resubmitted frameworks have not addressed the Board's concerns, the Board must modify the frameworks prior to adopting them. The State Board must adopt the recommended or modified frameworks not later than July 1, 2012.

To assist school districts in developing evaluation policies under the act, the Department of Education must do both of the following:

- Serve as a clearinghouse of promising evaluation procedures and evaluation models that districts may use;

- Provide technical assistance to districts in creating evaluation policies.

The act eliminates the former law guidelines established by the State Board.[63]

Utilizing that adopted framework, and in consultation with its teachers, the board of education of each school district must adopt a policy for teacher evaluations no later than July 1, 2013 for use in the following school year. The policy must specify the relative weight of the factors required under the framework that the State Board adopts in the overall evaluation and how each of those factors will be assessed. The policy also can require evaluations to include consideration of additional aspects of teacher performance designated by the board.

The policy that the board of education adopts must establish a teacher evaluation system that does the following:

(1) Is evidence-based and uses multiple measures of a teacher's use of knowledge and skills and of students' academic progress;

(2) Is aligned with the standards for teachers adopted under continuing law;

(3) Provides statements of expectation for professional performance and establishes specific criteria of expected job performance in the areas of responsibility assigned to the teacher;

(4) Requires observation of the teacher being evaluated by the person conducting the evaluation on at least two occasions for not less than 30 minutes on each occasion (similar to former law);

(5) Requires that each teacher be provided with a written report of the results of the teacher's evaluation that includes specific recommendations for any improvements needed in the teacher's performance, suggestions for professional development that will enhance future performance in areas that do not meet expected performance levels, and information on how to obtain assistance in making needed improvements.[64]

Under former law, a board of education that evaluated teachers under limited or extended limited contract with the board was required to adopt evaluation procedures that included the following items:

(1) Criteria of expected job performance in the areas of responsibility assigned to the teacher being evaluated;

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[63] R.C. 3319.112; former R.C. 3319.112 (repealed); conforming changes in R.C. 3319.02.

[64] R.C. 3319.111(A).

(2) Observation of the teacher being evaluated by the person conducting the evaluation on at least two occasions for not less than 30 minutes on each occasion;

(3) A written report of the results of the evaluation that included specific recommendations regarding any improvements needed in the performance of the teacher being evaluated and regarding the means by which the teacher could have obtained assistance in making such improvements.[65]

With limited exceptions, the act requires the board to conduct an evaluation of each teacher employed by the board at least once each school year. The board must complete the annual evaluation by April 1 and the teacher must receive a written report of the results of the evaluation by April 10. As under continuing law, the board must conduct the evaluation at least twice in any school year in which the board wishes to declare its intention not to re-employ a teacher with whom the board has entered into a limited contract or extended limited contract. The act requires the board to complete the first of the biannual evaluations no later than January 15, with the teacher receiving a written report of the results no later than January 25. The other evaluation must be completed, as under continuing law, between February 10 and April 1, with the teacher receiving a written report of the evaluation no later than April 10.[66]

Under continuing law, the evaluations must be conducted by one or more of the following persons:

(1) A person who is under contract with the board and who holds a license designated for being a superintendent, assistant superintendent, or principal;

(2) A person who is under contract with the board and who holds a license designated for being a vocational director or a supervisor in any educational area issued under continuing law;

(3) A person designated to conduct evaluations under an agreement providing for peer review entered into by the board and representatives of teachers employed by that board.

Under the act, the board must use the evaluations to inform decisions about compensation, nonrenewal of employment contracts, termination, reductions in force, and professional development. The board, its members, and any person conducting an evaluation on behalf of the board in good faith and in accordance with the law is

[65] Former R.C. 3319.111(C).

[66] R.C. 3319.111(B).

immune from any civil liability that otherwise might be incurred or imposed for injury, death, or loss to person or property as a result of conducting the evaluation.[67]

These evaluation procedures prevail over any conflicting provisions of a collective bargaining agreement entered into on or after the act's effective date.[68]

Public employee benefits

Health care benefits

All public employees

Under the act, public employees, including employees of the state and any of its political subdivisions, must be responsible for at least 15% of the cost of the provision of health care benefits provided through the Department of Administrative Services. "Health care benefits" include hospitalization, surgical, major medical, dental, vision, and medical care, disability, hearing aids, prescription drugs, or a combination of these benefits. Additionally, the health care benefits provided to a management level employee as defined in the PECBL must be the same as any health care benefits provided to other employees of the same public employer.[69]

Jointly administered trust funds

Under continuing law, any public employer, including the state or any of its political subdivisions, and any collective bargaining representative of the state's or political subdivision's employees may agree in a collective bargaining agreement that health care benefits be provided through a contribution to a jointly administered trust fund. The Department of Administrative Services may enter into an agreement with a jointly administered trust fund to provide self-insurance of health care benefits. The act requires any health care benefits provided through this fund to be the same as the health care benefits provided through the Department of Administrative Services if self-insuring, or the same as the health care benefits provided under a contract entered into between the political subdivision and the insurance company providing those benefits. The Director of Administrative Services or the political subdivision is required by the act to make any contract for health care benefits available to the board of trustees of the jointly administered trust fund.[70]

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[67] R.C. 3319.111(C), (D), and (E).

[68] R.C. 3319.111(F).

[69] R.C. 124.81(H) to (J), 124.82(G) and (H), and 3313.202(B)(3).

[70] R.C. 124.81(F) and (G), 124.82(E), 505.60, and 1545.071.

School district employees

Under continuing law, public school districts can provide health care plans to their employees so long as the plans contain best practices established by the School Employees Health Care Board. The act specifies that boards of education can procure health care plans for their employees and their employees' dependents and pay up to 85% of the costs for those plans. Additionally, the boards must keep certain people on the payroll for purposes of providing insurance, paying all or part of the cost of that coverage except in certain circumstances.[71]

The act permits a board of education member to be covered under a health care plan procured by the board for its employees, at the member's option. The health care plan provider (i.e., the insurer) must certify to the board the provider's charge for coverage under each option available to employees under the plan, and the board member must pay to the school district the amount certified for that coverage. This requirement on the board member seems parallel to the board member's previous duty under former law to pay "all premiums." Under the act, the board of education, instead of the Health Care Board under former law, can determine the manner of payment.[72]

Employee contributions to public employee retirement systems

With regard to the five state public retirement systems, the act prohibits a public employer from paying the statutorily required employee contribution on behalf of an employee. Public employees who contribute to the Public Employees Retirement System, the School Employees Retirement System, or the State Teachers Retirement System must pay 8% of their earnable salary or compensation to those systems under continuing law, and may be required to pay up to 10% of their compensation at the option of the appropriate governing board. Contributors to the Ohio Police and Fire Pension Fund and the State Highway Patrol Retirement System must pay 10% of their income to the appropriate retirement system. Formerly, employee contributions to the State Teachers Retirement System were the only contributions of those listed above that an employer had express authority to pay on behalf of an employee.

Employee contributions to the retirement systems listed above can be treated as employer contributions for the purposes of state and federal income tax deferred compensation provisions, under the act.[73]

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[71] R.C. 9.901 and 3313.202(B).

[72] R.C. 3313.202(C); R.C. 3311.19, 3313.12, and 3313.33.

[73] R.C. 145.47, 742.31, 3307.27, 3309.47, and 5505.15.

Police and Fire Pension Fund

Under continuing law, a spouse or the children of a firefighter or police officer who is a member of the Ohio Police and Fire Pension Fund or other qualifying retirement system and who is killed in the line of duty, receives a monthly death benefit. Formerly, that benefit was an amount equal to the full monthly salary received by the deceased member prior to death, minus an amount equal to the benefit received from the Police and Fire Pension Fund or the benefit received from a retirement system operated by a municipal corporation, plus any increases in salary that would have been granted the deceased member. The act changes the death benefit to be an amount equal to the full monthly salary in effect immediately prior to the act's effective date that was received by the deceased member, minus the same amounts as required under former law, plus any increases in salary permitted by law in effect immediately before the act's effective date that would have been granted the deceased member.[74]

Board of education employee leaves

The act abolishes the statutory sick leave, leave of absence, and assault leave provided to all school employees, the statutory personal leave and vacation leave provided to nonteaching employees, and the statutory professional improvement leave provided to teachers.[75] The act instead requires the board of education of each city, exempted village, local, and joint vocational school district and the governing board of each educational service center to adopt a policy to provide leave with pay for the employees of the board who are not covered by a collective bargaining agreement. The board must include all of the following in the policy:

(1) The types of leave the employee may use;

(2) The reasons for which an employee may use the types of leave the board grants under the policy;

(3) The amount of each type of leave an employee may receive;

(4) The manner in which an employee accumulates each type of leave;

(5) The maximum amount of each type of leave that an employee may accumulate;

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[74] R.C. 742.63.

[75] R.C. 124.38, 3319.084, 3319.13, 3319.131 (repealed), 3319.141, 3319.142 (repealed), and 3319.143 (repealed).

(6) The manner in which any previously accumulated leave of a person who has been separated from public service will be placed to the employee's credit upon re-employment in the public service;

(7) The manner in which a teacher or nonteaching school employee who transfers from one public agency to another will be credited with the unused balance of the teacher's or nonteaching employee's accumulated leave up to the maximum of the leave accumulation permitted in the public agency to which the employee transfers;

(8) Whether, and the manner in which, teachers and nonteaching school employees who render part-time, seasonal, intermittent, per diem, or hourly service will be entitled to leave for the time actually worked;

(9) The manner in which the board provides leave for school closures due to epidemic or other public calamity, of for time lost due to illness or otherwise;

(10) Any other issue relating to the use and availability of leave.

An employee must obtain approval of the responsible administrative officer to use leave in accordance with the leave policy the board adopts.

The act permits a board, in its policy, to require an employee to furnish a written, signed statement on forms prescribed by such board to justify the use of any sick leave granted under the policy. If the board requires the employee to submit a statement from a physician, falsification of a statement is grounds for suspension or termination of employment.

The board, in the policy, may not grant or credit sick leave in excess of ten days per calendar year or to a teacher after the teacher's retirement or termination of employment.

The act permits each board of education to establish regulations for the entitlement, crediting, and use of leave by those substitute teachers employed by the board who are not otherwise entitled to sick leave.

The leave policy adopted by the board does not interfere with any unused sick leave credit in any agency of government where attendance records are maintained and credit has been given for unused sick leave. Unused sick leave accumulated by teachers and nonteaching school employees prior to the effective date of the act, will continue to be credited toward the maximum accumulation permitted under a policy adopted under the act.

The board is required to post the policy in a conspicuous location on the web site maintained by the board. The board is required to review the policy on an annual basis and to post any changes to that policy in a conspicuous location on that web site.

The act permits the board and an exclusive representative to agree to apply the policy to employees covered by a collective bargaining agreement between the two parties.[76]

The act requires all of the following types of leave to be awarded in accordance with the policy adopted by the board:

(1) Administrative leave with pay;[77]

(2) Sick leave or leave of absence for the board treasurer;[78]

(3) Vacation leave for the board treasurer;[79]

(4) Vacation leave for the superintendent;[80]

(5) Sick leave or leave of absence for the superintendent;[81]

(6) Vacation leave for assistant superintendents, principals, assistant principals, and other administrators;[82]

(7) Vacation leave for internal auditors;[83]

(8) Sick leave for substitute teachers assigned to one specific teaching position who have served at least 60 days in that position;[84]

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[76] R.C. 3319.141 and conforming changes in R.C. 124.38, 124.39, and 3319.09.

[77] R.C. 124.388.

[78] R.C. 3313.23.

[79] R.C. 3313.24.

[80] R.C. 3319.01.

[81] R.C. 3319.011.

[82] R.C. 3319.02.

[83] R.C. 3319.06.

[84] R.C. 3319.10.

(9) Leave of absence for a teaching or regular nonteaching school employee;[85]

(10) Professional leave for members of the educator standards board, the subcommittee on standards for superintendents, and the subcommittee on standards for school treasurers and business managers;[86]

(11) Vacation leave for nonteaching employees.[87]

Continuing contracts for teachers

The act abolishes continuing contracts for teachers, except for those continuing contracts entered into prior to the effective date of the act. The act instead requires classroom teachers to receive limited contracts. A limited contract for a classroom teacher has a term of up to five years if the contract was entered into prior to the effective date of the act. The term of an initial contract cannot exceed three years if the contract is entered into on or after the effective date of the act and for subsequent contracts the term is not less than two years or more than five years.[88]

Vacation and sick leave

The act caps vacation leave for exempt employees, other employees required to be paid according to the exempt salary schedule, legislative employees, certain executive branch employees, and any position for which the authority to determine compensation is given by law to another individual or entity who is not the Director of Administrative Services who have 19 or more years of service at 7.7 hours per biweekly pay period (approximately 5 weeks of vacation per year). Under former law, this cap applied to only those employees with 19 to 24 years of service; those employees with 24 or more years of service earned 9.2 hours of vacation leave per biweekly pay period (approximately 6 weeks of vacation per year). The act requires an employee who was accruing vacation leave at the previous rate of 9.2 hours per pay period and whose vacation leave balance exceeds 600 hours on the effective date of the act to forfeit the employee's right to take or be paid for any vacation leave to the employee's credit that is in excess of 720 hours.[89]

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[85] R.C. 3319.13.

[86] R.C. 3319.63.

[87] R.C. 3319.084.

[88] R.C. 3319.08 and 3319.11.

[89] R.C. 124.134.

The act also reduces the amount of sick leave most local public employees receive from 4.6 hours per biweekly pay period (approximately 3 weeks total per year) to 3.1 hours per biweekly pay period (approximately 2 weeks total per year). This reduction applies to both of the following groups:

- Employees in the various offices of the county, municipal, and civil service township service, other than superintendents and management employees, as defined under existing law, of county boards of developmental disabilities;

- Employees of any state college or university.

Employees paid by warrant of the Director of Budget and Management (essentially, state employees) receive 3.1 hours of sick leave per biweekly pay period (approximately 2 weeks total per year) under continuing law.[90]

Reductions in the public sector work force

State and county employees

In general, the act limits the use of seniority and length of service in making decisions regarding layoffs. Existing law requires that the Director of Administrative Services adopt rules establishing a method for determining layoff procedures and an order of layoff of state and county employees. Under the act, the order of layoff under those rules can still be based in part on length of service but cannot be based solely on the employee's length of service. Additionally, the act eliminates a provision that expressly allows efficiency in service, appointment type, and other appropriate factors to be considered.

The act requires layoffs, job abolishments, and displacements to be governed by the Revised Code or the rules adopted pursuant to it that are in effect at the time the appointing authority files the statement of rationale and supporting documentation in accordance with continuing law, as applicable. Otherwise, the act requires layoffs, job abolishments, and displacements to be governed by the Revised Code or the rules adopted pursuant to it that are in effect at the time of notification of layoff or displacement to the employee. Under continuing law, an appointing authority abolishing any position in the service of the state is required to file a statement of rationale and supporting documentation with the Director of Administrative Services prior to sending a notice of abolishment.[91]

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[90] R.C. 124.38 and 124.382, unchanged by the act.

[91] R.C. 124.322, 4117.09(F), and 124.321, not in the act.

The act also prohibits a county transit board that establishes its own civil service organization before October 25, 1995, from using an employee's length of service as the only factor in deciding layoffs.[92]

School district employees

School districts are similarly limited in their considerations concerning a reduction in work force. With regard to teaching and nonteaching employees, the act removes the authority of school districts and school district financial planning and supervision commissions to give preference to those employees who have greater seniority. Teachers and nonteachers with continuing contracts receive preference under continuing law. The act states that after giving preference to continuing contracts, the board of a city, exempted village, local, or joint vocational school district is required to consider the relative quality of performance the principal factor in determining the order of reductions. With respect to teachers, the board is required to measure the quality of performance by considering the level of license that the teacher holds, whether the teacher is considered 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 evaluation, and any other criteria established by the board. Teachers and nonteaching employees whose continuing contracts are suspended by a city, exempted village, local, or joint vocational school district, however, have the right under continuing law to be brought back in the order of seniority.[93]

Township firefighters

The act removes a provision under which the reduction of a township's firefighting force or a joint township fire district firefighting force, due to township territory being annexed by a municipal corporation, had to be made under former law by dismissal of firefighters in the inverse order of seniority. Under the act, seniority is prohibited from being the only factor used in determining dismissals. The annexing municipal corporation must continue to offer employment to those dismissed firefighters as employment becomes available, but not in the inverse order of dismissal as previously required.[94]

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[92] R.C. 306.04.

[93] R.C. 3316.07(A)(11), 3319.17(C), 3319.172, and 3319.18.

[94] R.C. 709.012.

Retention points

The act requires an appointing authority to calculate retention points based on length of service, efficiency of service, and similar factors. It is unclear who calculated these retention points under former law, but the Department of Administrative Services was required under former law to verify the retention points based on length of continuous service and efficiency in service.[95] The act also authorizes the appointing authority to adopt rules to determine the order of layoffs between two employees who have identical retention points. Under continuing law, however, the Director of Administrative Services is responsible for establishing a system for assigning retention points for state employees and determining the order of layoffs when two state employees have identical retention points. The act requires the system adopted by the Director to permit an appointing authority to consider the number of management and nonmanagement employees when determining which employees to lay off.[96]

Discrimination

The act prohibits a public employer, when determining whether to lay off an employee as part of a reduction in force, from considering the race, color, religion, sex, military status, national origin, disability, age, or ancestry of the employee in violation of Ohio's Civil Rights Law or any applicable federal law.[97]

Ohio Commission for Excellence in Public Service

The act creates the Ohio Commission for Excellence in Public Service, which consists of at least 7 and not more than 11 voting members. The Director of Administrative Services may appoint additional participants and establish advisory committees for the commission, but any additional participants may not be voting members.

Within 40 days after the act's effective date, the Director is required to appoint the voting members of the Commission. In making the appointments, the Director is required to consult with organizations that have both of the following:

(1) Memberships consisting of, and that represent the professional or labor interests of, employees of state agencies, state institutions of higher education, or political subdivisions of Ohio;

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[95] R.C. 124.325(A).

[96] R.C. 124.325(C).

[97] R.C. 4113.80.

(2) Memberships that employ public service employees, including municipal leagues and municipal league organizations, which include mayors' associations and municipal finance officers, county auditors, judges, county commissioners, county prosecutors, county sheriffs, township trustees, school boards, and school superintendents.

The Commission is required to consult with public and private organizations located internationally, nationally, and within Ohio and with members or employees in Ohio that have been recognized as having expertise and competencies in best practices that foster healthy workplace conditions for both employees and employers.

The Commission may partner with existing organizations to perform its functions in order to maximize resources and demonstrate lean and efficient practices. The Commission may organize itself with capability to contract or employ and to have fiscal authority to receive funds from private or public entities, contract for services, provide grants, and establish cost matching or gain sharing programs. Members of the Commission are prohibited from receiving compensation but are required to be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

The Commission is required to do all of the following:

(1) Establish and guide programs that foster best practices for developing and maintaining healthy working relationships in public service workplaces in state and local governments in Ohio;

(2) Emphasize approaches that encourage involvement of direct-service employees and their supervisors in identifying and implementing (1), above.

(3) Promote programs that offer scholarships or other financial aid, provide certification or other accreditation, and provide recognition through awards or other means to individuals and organizations that achieve excellence in (1), above.

The programs described in (3), above, are required to be promoted in public and private high schools, colleges and universities, amongst associations of governmental officials, and amongst public employee organizations in order to teach best practices under (1), above.

The Commission annually is required to prepare a report on the activities and finances of the Commission beginning not later than one year and three months after a

majority of the initial membership of the Commission is appointed. The Commission is required to post the report in a conspicuous location on the Commission's web site.[98]

Other

The act makes additional technical, conforming, and nonsubstantive changes.[99]

Background – employees who are not permitted to strike

Formerly, the following public employees could not strike:

(1) Members of a police or fire department;

(2) Members of the State Highway Patrol;

(3) Deputy sheriffs;

(4) Dispatchers employed by a police, fire, or sheriff's department or the state highway patrol or civilian dispatchers employed by a public employer other than a police, fire, or sheriff's department to dispatch police, fire, sheriff's department, or emergency medical or rescue personnel and units;

(5) An exclusive nurse's unit;

(6) Employees of the State School for the Deaf or the State School for the Blind;

(7) Employees of any public employee retirement system;

(8) Corrections officers;

(9) Guards at penal or mental institutions;

(10) Special police officers for the Department of Mental Health or the Department of Developmental Disabilities;

(11) Psychiatric attendants employed at mental health forensic facilities;

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[98] R.C. 124.94.

[99] R.C. 9.901, 102.02, 124.11, 124.14, 124.15, 124.181, 124.34, 124.382, 126.32, 141.01, 141.02, 145.012, 917.03, 927.69, 991.02, 1349.71, 1509.35, 1513.182, 1513.29, 1551.35, 1707.36, 1707.46, 3301.03, 3304.12, 3307.77, 3317.12, 3317.14, 3319.13, 3319.02, 3319.11, 3319.112, 3319.61, 3326.18, 3332.03, 3701.33, 3737.81, 3737.90, 3770.02, 3772.06, 3773.33, 3781.07, 4112.03, 4117.02, 4123.352, 4301.07, 4517.30, 4701.03, 4701.05, 4703.03, 4703.31, 4709.04, 4715.06, 4717.02, 4723.02, 4725.06, 4725.46, 4729.03, 4730.05, 4731.03, 4732.05, 4733.05, 4734.03, 4738.09, 4741.02, 4747.03, 4753.04, 4755.01, 4757.05, 4758.12, 4759.03, 4761.02, 4763.02, 4775.05, 4905.10, 4906.02, 4911.07, 5107.26, 5119.09, 5123.51, 5126.24, 5139.02, 5503.03, and 5703.09.

(12) Youth leaders employed at juvenile correctional facilities;

(13) Members of a law enforcement security force that is established and maintained exclusively by a board of county commissioners and whose members are employed by that board.[100]

HISTORY

ACTION	DATE
Introduced	02-01-11
Reported, S. Insurance, Commerce, and Labor	03-02-11
Passed Senate (17-16)	03-02-11
Reported, H. Commerce & Labor	03-29-11
Passed House (53-44)	03-30-11
Senate concurred in House amendments (17-16)	03-30-11

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[100] R.C. 4117.14(D) and 4117.15(A).