

As Introduced

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Representative Flowers

Cosponsors: Representatives Barrett, Beatty, Blessing, Bolon, Book, Brady, Brown, Budish, Celeste, Chandler, Collier, Combs, DeGeeter, Distel, Dodd, Domenick, Driehaus, Dyer, Fende, Foley, Garrison, Gerberry, Goyal, Hagan, J., Hagan, R., Harwood, Healy, Heard, Huffman, Hughes, Letson, Luckie, Lundy, Mallory, McGregor, J., McGregor, R., Oelslager, Okey, Otterman, Patton, Peterson, Sayre, Schindel, Skindell, Strahorn, Stewart, D., Stewart, J., Sykes, Szollosi, Uecker, Ujvagi, Wagoner, Williams, B., Williams, S., Wolpert, Yates, Yuko, Zehringer

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A B I L L

To amend sections 4117.01 and 4117.09 of the Revised Code to modify coverage of the Public Employees' Collective Bargaining Law with respect to township fire departments. 1
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4117.01 and 4117.09 of the Revised Code be amended to read as follows: 5
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Sec. 4117.01. As used in this chapter: 7

(A) "Person," in addition to those included in division (C) of section 1.59 of the Revised Code, includes employee organizations, public employees, and public employers. 8
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(B)(1) "Public employer" means the state or any political 11

subdivision of the state located entirely within the state, 12
including, without limitation, any municipal corporation with a 13
population of at least five thousand ~~according to the most recent~~ 14
~~federal decennial census~~; county; township with a population of at 15
least five thousand in the unincorporated area of the township 16
~~according to the most recent federal decennial census~~; school 17
district; governing authority of a community school established 18
under Chapter 3314. of the Revised Code; state institution of 19
higher learning; public or special district; state agency, 20
authority, commission, or board; or other branch of public 21
employment. 22

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

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

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

(1) Persons holding elective office; 38

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

(3) Employees on the staff of the governor or the chief executive of the public employer whose principal duties are directly related to the performance of the executive functions of the governor or the chief executive;	43 44 45 46
(4) Persons who are members of the Ohio organized militia, while training or performing duty under section 5919.29 or 5923.12 of the Revised Code;	47 48 49
(5) Employees of the state employment relations board;	50
(6) Confidential employees;	51
(7) Management level employees;	52
(8) Employees and officers of the courts, assistants to the attorney general, assistant prosecuting attorneys, and employees of the clerks of courts who perform a judicial function;	53 54 55
(9) Employees of a public official who act in a fiduciary capacity, appointed pursuant to section 124.11 of the Revised Code;	56 57 58
(10) Supervisors;	59
(11) Students whose primary purpose is educational training, including graduate assistants or associates, residents, interns, or other students working as part-time public employees less than fifty per cent of the normal year in the employee's bargaining unit;	60 61 62 63 64
(12) Employees of county boards of election;	65
(13) Seasonal and casual employees as determined by the state employment relations board;	66 67
(14) Part-time faculty members of an institution of higher education;	68 69
(15) Employees of the state personnel board of review;	70
(16) Participants in a work activity, developmental activity,	71

or alternative work activity under sections 5107.40 to 5107.69 of 72
the Revised Code who perform a service for a public employer that 73
the public employer needs but is not performed by an employee of 74
the public employer if the participant is not engaged in paid 75
employment or subsidized employment pursuant to the activity; 76

(17) Employees included in the career professional service of 77
the department of transportation under section 5501.20 of the 78
Revised Code; 79

(18) Employees of community-based correctional facilities and 80
district community-based correctional facilities created under 81
sections 2301.51 to 2301.58 of the Revised Code who are not 82
subject to a collective bargaining agreement on June 1, 2005. 83

(D) "Employee organization" means any labor or bona fide 84
organization in which public employees participate and that exists 85
for the purpose, in whole or in part, of dealing with public 86
employers concerning grievances, labor disputes, wages, hours, 87
terms, and other conditions of employment. 88

(E) "Exclusive representative" means the employee 89
organization certified or recognized as an exclusive 90
representative under section 4117.05 of the Revised Code. 91

(F) "Supervisor" means any individual who has authority, in 92
the interest of the public employer, to hire, transfer, suspend, 93
lay off, recall, promote, discharge, assign, reward, or discipline 94
other public employees; to responsibly direct them; to adjust 95
their grievances; or to effectively recommend such action, if the 96
exercise of that authority is not of a merely routine or clerical 97
nature, but requires the use of independent judgment, provided 98
that: 99

(1) Employees of school districts who are department 100
chairpersons or consulting teachers shall not be deemed 101
supervisors; 102

(2) With respect to members of a police or fire department, 103
no person shall be deemed a supervisor except the chief of the 104
department or those individuals who, in the absence of the chief, 105
are authorized to exercise the authority and perform the duties of 106
the chief of the department. Where prior to June 1, 1982, a public 107
employer pursuant to a judicial decision, rendered in litigation 108
to which the public employer was a party, has declined to engage 109
in collective bargaining with members of a police or fire 110
department on the basis that those members are supervisors, those 111
members of a police or fire department do not have the rights 112
specified in this chapter for the purposes of future collective 113
bargaining. The state employment relations board shall decide all 114
disputes concerning the application of division (F)(2) of this 115
section. 116

(3) With respect to faculty members of a state institution of 117
higher education, heads of departments or divisions are 118
supervisors; however, no other faculty member or group of faculty 119
members is a supervisor solely because the faculty member or group 120
of faculty members participate in decisions with respect to 121
courses, curriculum, personnel, or other matters of academic 122
policy; 123

(4) No teacher as defined in section 3319.09 of the Revised 124
Code shall be designated as a supervisor or a management level 125
employee unless the teacher is employed under a contract governed 126
by section 3319.01, 3319.011, or 3319.02 of the Revised Code and 127
is assigned to a position for which a license deemed to be for 128
administrators under state board rules is required pursuant to 129
section 3319.22 of the Revised Code. 130

(G) "To bargain collectively" means to perform the mutual 131
obligation of the public employer, by its representatives, and the 132
representatives of its employees to negotiate in good faith at 133
reasonable times and places with respect to wages, hours, terms, 134

and other conditions of employment and the continuation, 135
modification, or deletion of an existing provision of a collective 136
bargaining agreement, with the intention of reaching an agreement, 137
or to resolve questions arising under the agreement. "To bargain 138
collectively" includes executing a written contract incorporating 139
the terms of any agreement reached. The obligation to bargain 140
collectively does not mean that either party is compelled to agree 141
to a proposal nor does it require the making of a concession. 142

(H) "Strike" means continuous concerted action in failing to 143
report to duty; willful absence from one's position; or stoppage 144
of work in whole from the full, faithful, and proper performance 145
of the duties of employment, for the purpose of inducing, 146
influencing, or coercing a change in wages, hours, terms, and 147
other conditions of employment. "Strike" does not include a 148
stoppage of work by employees in good faith because of dangerous 149
or unhealthful working conditions at the place of employment that 150
are abnormal to the place of employment. 151

(I) "Unauthorized strike" includes, but is not limited to, 152
concerted action during the term or extended term of a collective 153
bargaining agreement or during the pendency of the settlement 154
procedures set forth in section 4117.14 of the Revised Code in 155
failing to report to duty; willful absence from one's position; 156
stoppage of work; slowdown, or abstinence in whole or in part from 157
the full, faithful, and proper performance of the duties of 158
employment for the purpose of inducing, influencing, or coercing a 159
change in wages, hours, terms, and other conditions of employment. 160
"Unauthorized strike" includes any such action, absence, stoppage, 161
slowdown, or abstinence when done partially or intermittently, 162
whether during or after the expiration of the term or extended 163
term of a collective bargaining agreement or during or after the 164
pendency of the settlement procedures set forth in section 4117.14 165
of the Revised Code. 166

(J) "Professional employee" means any employee engaged in work that is predominantly intellectual, involving the consistent exercise of discretion and judgment in its performance and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship; or an employee who has completed the courses of specialized intellectual instruction and is performing related work under the supervision of a professional person to become qualified as a professional employee.

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

(L) "Management level employee" means 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. Assistant superintendents, principals, and assistant principals whose employment is governed by section 3319.02 of the Revised Code are management level employees. With respect to members of a faculty of a state institution of higher education, no person is a management level employee because of the person's involvement in the formulation or implementation of academic or institution policy.

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

(N) "Member of a police department" means a person who is in the employ of a police department of a municipal corporation as a full-time regular police officer as the result of an appointment from a duly established civil service eligibility list or under section 737.15 or 737.16 of the Revised Code, a full-time deputy sheriff appointed under section 311.04 of the Revised Code, a township constable appointed under section 509.01 of the Revised Code, or a member of a township police district police department appointed under section 505.49 of the Revised Code.

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

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

(Q) "Day" means calendar day.

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

(B) The agreement shall contain a provision that:

(1) Provides for a grievance procedure which may culminate with final and binding arbitration of unresolved grievances, and disputed interpretations of agreements, and which is valid and enforceable under its terms when entered into in accordance with this chapter. No publication thereof is required to make it effective. A party to the agreement may bring suits for violation of agreements or the enforcement of an award by an arbitrator in

the court of common pleas of any county wherein a party resides or 229
transacts business. 230

(2) Authorizes the public employer to deduct the periodic 231
dues, initiation fees, and assessments of members of the exclusive 232
representative upon presentation of a written deduction 233
authorization by the employee. 234

(C) The agreement may contain a provision that requires as a 235
condition of employment, on or after a mutually agreed upon 236
probationary period or sixty days following the beginning of 237
employment, whichever is less, or the effective date of a 238
collective bargaining agreement, whichever is later, that the 239
employees in the unit who are not members of the employee 240
organization pay to the employee organization a fair share fee. 241
The arrangement does not require any employee to become a member 242
of the employee organization, nor shall fair share fees exceed 243
dues paid by members of the employee organization who are in the 244
same bargaining unit. Any public employee organization 245
representing public employees pursuant to this chapter shall 246
prescribe an internal procedure to determine a rebate, if any, for 247
nonmembers which conforms to federal law, provided a nonmember 248
makes a timely demand on the employee organization. Absent 249
arbitrary and capricious action, such determination is conclusive 250
on the parties except that a challenge to the determination may be 251
filed with the state employment relations board within thirty days 252
of the determination date specifying the arbitrary or capricious 253
nature of the determination and the board shall review the rebate 254
determination and decide whether it was arbitrary or capricious. 255
The deduction of a fair share fee by the public employer from the 256
payroll check of the employee and its payment to the employee 257
organization is automatic and does not require the written 258
authorization of the employee. 259

The internal rebate procedure shall provide for a rebate of 260

expenditures in support of partisan politics or ideological causes 261
not ~~germaine~~ germane to the work of employee organizations in the 262
realm of collective bargaining. 263

Any public employee who is a member of and adheres to 264
established and traditional tenets or teachings of a bona fide 265
religion or religious body which has historically held 266
conscientious objections to joining or financially supporting an 267
employee organization and which is exempt from taxation under the 268
provisions of the Internal Revenue Code shall not be required to 269
join or financially support any employee organization as a 270
condition of employment. Upon submission of proper proof of 271
religious conviction to the board, the board shall declare the 272
employee exempt from becoming a member of or financially 273
supporting an employee organization. The employee shall be 274
required, in lieu of the fair share fee, to pay an amount of money 275
equal to the fair share fee to a nonreligious charitable fund 276
exempt from taxation under section 501(c)(3) of the Internal 277
Revenue Code mutually agreed upon by the employee and the 278
representative of the employee organization to which the employee 279
would otherwise be required to pay the fair share fee. The 280
employee shall furnish to the employee organization written 281
receipts evidencing such payment, and failure to make the payment 282
or furnish the receipts shall subject the employee to the same 283
sanctions as would nonpayment of dues under the applicable 284
collective bargaining agreement. 285

No public employer shall agree to a provision requiring that 286
a public employee become a member of an employee organization as a 287
condition for securing or retaining employment. 288

(D) As used in this division, "teacher" means any employee of 289
a school district certified to teach in the public schools of this 290
state. 291

The agreement may contain a provision that provides for a 292

peer review plan under which teachers in a bargaining unit or 293
representatives of an employee organization representing teachers 294
may, for other teachers of the same bargaining unit or teachers 295
whom the employee organization represents, participate in 296
assisting, instructing, reviewing, evaluating, or appraising and 297
make recommendations or participate in decisions with respect to 298
the retention, discharge, renewal, or nonrenewal of, the teachers 299
covered by a peer review plan. 300

The participation of teachers or their employee organization 301
representative in a peer review plan permitted under this division 302
shall not be construed as an unfair labor practice under this 303
chapter or as a violation of any other provision of law or rule 304
adopted pursuant thereto. 305

(E) No agreement shall contain an expiration date that is 306
later than three years from the date of execution. The parties may 307
extend any agreement, but the extensions do not affect the 308
expiration date of the original agreement. 309

(F) As used in this division, "township" means a public 310
employer as defined in division (B)(2) of section 4117.01 of the 311
Revised Code. 312

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

Section 2. That existing sections 4117.01 and 4117.09 of the 323

Revised Code are hereby repealed.

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