

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 365

Representative Chandler

**Cosponsors: Representatives Hagan, Foley, Oelslager, Williams, B., Yuko,
Domenick, Phillips, Skindell, Okey, Harris, Letson, Pryor, Stewart, Fende,
Harwood**

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A B I L L

To amend sections 4117.01 and 4117.03 of the Revised 1
Code to eliminate an exemption from the Public 2
Employees' Collective Bargaining Law for specified 3
educational employees. 4

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

Section 1. That sections 4117.01 and 4117.03 of the Revised 5
Code be amended to read as follows: 6

Sec. 4117.01. As used in this chapter: 7

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

(B) "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

(C) "Public employee" means any person holding a position by 23
appointment or employment in the service of a public employer, 24
including any person working pursuant to a contract between a 25
public employer and a private employer and over whom the national 26
labor relations board has declined jurisdiction on the basis that 27
the involved employees are employees of a public employer, except: 28

(1) Persons holding elective office; 29

(2) Employees of the general assembly and employees of any 30
other legislative body of the public employer whose principal 31
duties are directly related to the legislative functions of the 32
body; 33

(3) Employees on the staff of the governor or the chief 34
executive of the public employer whose principal duties are 35
directly related to the performance of the executive functions of 36
the governor or the chief executive; 37

(4) Persons who are members of the Ohio organized militia, 38
while training or performing duty under section 5919.29 or 5923.12 39
of the Revised Code; 40

(5) Employees of the state employment relations board, 41
including those employees of the state employment relations board 42
utilized by the state personnel board of review in the exercise of 43
the powers and the performance of the duties and functions of the 44
state personnel board of review; 45

(6) Confidential employees; 46

(7) Management level employees;	47
(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;	48 49 50
(9) Employees of a public official who act in a fiduciary capacity, appointed pursuant to section 124.11 of the Revised Code;	51 52 53
(10) Supervisors;	54
(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;	55 56 57 58 59
(12) Employees of county boards of election;	60
(13) <u>(12)</u> Seasonal and casual employees as determined by the state employment relations board;	61 62
(14) Part time faculty members of an institution of higher education;	63 64
(15) <u>(13)</u> Participants in a work activity, developmental activity, or alternative work activity under sections 5107.40 to 5107.69 of the Revised Code who perform a service for a public employer that the public employer needs but is not performed by an employee of the public employer if the participant is not engaged in paid employment or subsidized employment pursuant to the activity;	65 66 67 68 69 70 71
(16) <u>(14)</u> Employees included in the career professional service of the department of transportation under section 5501.20 of the Revised Code;	72 73 74
(17) <u>(15)</u> Employees of community-based correctional facilities and district community-based correctional facilities created under	75 76

sections 2301.51 to 2301.58 of the Revised Code who are not 77
subject to a collective bargaining agreement on June 1, 2005+ 78

(D) "Employee organization" means any labor or bona fide 79
organization in which public employees participate and that exists 80
for the purpose, in whole or in part, of dealing with public 81
employers concerning grievances, labor disputes, wages, hours, 82
terms, and other conditions of employment. 83

(E) "Exclusive representative" means the employee 84
organization certified or recognized as an exclusive 85
representative under section 4117.05 of the Revised Code. 86

(F) "Supervisor" means any individual who has authority, in 87
the interest of the public employer, to hire, transfer, suspend, 88
lay off, recall, promote, discharge, assign, reward, or discipline 89
other public employees; to responsibly direct them; to adjust 90
their grievances; or to effectively recommend such action, if the 91
exercise of that authority is not of a merely routine or clerical 92
nature, but requires the use of independent judgment, provided 93
that: 94

(1) Employees of school districts who are department 95
chairpersons or consulting teachers shall not be deemed 96
supervisors; 97

(2) With respect to members of a police or fire department, 98
no person shall be deemed a supervisor except the chief of the 99
department or those individuals who, in the absence of the chief, 100
are authorized to exercise the authority and perform the duties of 101
the chief of the department. Where prior to June 1, 1982, a public 102
employer pursuant to a judicial decision, rendered in litigation 103
to which the public employer was a party, has declined to engage 104
in collective bargaining with members of a police or fire 105
department on the basis that those members are supervisors, those 106
members of a police or fire department do not have the rights 107

specified in this chapter for the purposes of future collective bargaining. The state employment relations board shall decide all disputes concerning the application of division (F)(2) of this section.

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

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

(G) "To bargain collectively" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, terms, and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. "To bargain collectively" includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.

(H) "Strike" means continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage

of work in whole from the full, faithful, and proper performance 140
of the duties of employment, for the purpose of inducing, 141
influencing, or coercing a change in wages, hours, terms, and 142
other conditions of employment. "Strike" does not include a 143
stoppage of work by employees in good faith because of dangerous 144
or unhealthful working conditions at the place of employment that 145
are abnormal to the place of employment. 146

(I) "Unauthorized strike" includes, but is not limited to, 147
concerted action during the term or extended term of a collective 148
bargaining agreement or during the pendency of the settlement 149
procedures set forth in section 4117.14 of the Revised Code in 150
failing to report to duty; willful absence from one's position; 151
stoppage of work; slowdown, or abstinence in whole or in part from 152
the full, faithful, and proper performance of the duties of 153
employment for the purpose of inducing, influencing, or coercing a 154
change in wages, hours, terms, and other conditions of employment. 155
"Unauthorized strike" includes any such action, absence, stoppage, 156
slowdown, or abstinence when done partially or intermittently, 157
whether during or after the expiration of the term or extended 158
term of a collective bargaining agreement or during or after the 159
pendency of the settlement procedures set forth in section 4117.14 160
of the Revised Code. 161

(J) "Professional employee" means any employee engaged in 162
work that is predominantly intellectual, involving the consistent 163
exercise of discretion and judgment in its performance and 164
requiring knowledge of an advanced type in a field of science or 165
learning customarily acquired by a prolonged course in an 166
institution of higher learning or a hospital, as distinguished 167
from a general academic education or from an apprenticeship; or an 168
employee who has completed the courses of specialized intellectual 169
instruction and is performing related work under the supervision 170
of a professional person to become qualified as a professional 171

employee. 172

(K) "Confidential employee" means any employee who works in 173
the personnel offices of a public employer and deals with 174
information to be used by the public employer in collective 175
bargaining; or any employee who works in a close continuing 176
relationship with public officers or representatives directly 177
participating in collective bargaining on behalf of the employer. 178

(L) "Management level employee" means an individual who 179
formulates policy on behalf of the public employer, who 180
responsibly directs the implementation of policy, or who may 181
reasonably be required on behalf of the public employer to assist 182
in the preparation for the conduct of collective negotiations, 183
administer collectively negotiated agreements, or have a major 184
role in personnel administration. Assistant superintendents, 185
principals, and assistant principals whose employment is governed 186
by section 3319.02 of the Revised Code are management level 187
employees. With respect to members of a faculty of a state 188
institution of higher education, no person is a management level 189
employee because of the person's involvement in the formulation or 190
implementation of academic or institution policy. 191

(M) "Wages" means hourly rates of pay, salaries, or other 192
forms of compensation for services rendered. 193

(N) "Member of a police department" means a person who is in 194
the employ of a police department of a municipal corporation as a 195
full-time regular police officer as the result of an appointment 196
from a duly established civil service eligibility list or under 197
section 737.15 or 737.16 of the Revised Code, a full-time deputy 198
sheriff appointed under section 311.04 of the Revised Code, a 199
township constable appointed under section 509.01 of the Revised 200
Code, or a member of a township police district police department 201
appointed under section 505.49 of the Revised Code. 202

(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. 4117.03. (A) Public employees have the right to:

(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in Chapter 4117. of the Revised Code, any employee organization of their own choosing;

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

(3) Representation by an employee organization;

(4) Bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements;

(5) Present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment.

(B) Persons on active duty or acting in any capacity as

members of the organized militia do not have collective bargaining rights. 233
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(C) Except as provided in division (D) of this section, 235
nothing in Chapter 4117. of the Revised Code prohibits public 236
employers from electing to engage in collective bargaining, to 237
meet and confer, to hold discussions, or to engage in any other 238
form of collective negotiations with public employees who are not 239
subject to Chapter 4117. of the Revised Code pursuant to division 240
(C) of section 4117.01 of the Revised Code. 241

(D) A public employer shall not engage in collective 242
bargaining or other forms of collective negotiations with the 243
employees of county boards of elections referred to in division 244
(C)~~(12)~~(11) of section 4117.01 of the Revised Code. 245

(E) Employees of public schools may bargain collectively for 246
health care benefits; however, all health care benefits shall 247
include best practices prescribed by the school employees health 248
care board, in accordance with section 9.901 of the Revised Code. 249

Section 2. That existing sections 4117.01 and 4117.03 of the 250
Revised Code are hereby repealed. 251