

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

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**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 BILL**

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
<del>(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;</del>	55 56 57 58 59
<del>(12)</del> Employees of county boards of election;	60
<del>(13)</del> <u>(12)</u> Seasonal and casual employees as determined by the state employment relations board;	61 62
<del>(14)</del> Part-time faculty members of an institution of higher education;	63 64
<del>(15)</del> <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
<del>(16)</del> <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
<del>(17)</del> <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