

As Introduced

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S. B. No. 129

Senator Strahorn

Cosponsors: Senators Miller, D., Morano, Miller, R.

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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

(6) Confidential employees; 42

(7) Management level employees; 43

(8) Employees and officers of the courts, assistants to the 44
attorney general, assistant prosecuting attorneys, and employees 45
of the clerks of courts who perform a judicial function; 46

(9) Employees of a public official who act in a fiduciary 47
capacity, appointed pursuant to section 124.11 of the Revised 48
Code; 49

(10) Supervisors;	50
(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;	51 52 53 54 55
(12) Employees of county boards of election;	56
(13) <u>(12)</u> Seasonal and casual employees as determined by the state employment relations board;	57 58
(14) Part time faculty members of an institution of higher education;	59 60
(15) <u>(13)</u> Employees of the state personnel board of review;	61
(16) <u>(14)</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;	62 63 64 65 66 67 68
(17) <u>(15)</u> Employees included in the career professional service of the department of transportation under section 5501.20 of the Revised Code;	69 70 71
(18) <u>(16)</u> Employees of community-based correctional facilities and district community-based correctional facilities created under sections 2301.51 to 2301.58 of the Revised Code who are not subject to a collective bargaining agreement on June 1, 2005.	72 73 74 75
(D) "Employee organization" means any labor or bona fide organization in which public employees participate and that exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours,	76 77 78 79

terms, and other conditions of employment. 80

(E) "Exclusive representative" means the employee 81
organization certified or recognized as an exclusive 82
representative under section 4117.05 of the Revised Code. 83

(F) "Supervisor" means any individual who has authority, in 84
the interest of the public employer, to hire, transfer, suspend, 85
lay off, recall, promote, discharge, assign, reward, or discipline 86
other public employees; to responsibly direct them; to adjust 87
their grievances; or to effectively recommend such action, if the 88
exercise of that authority is not of a merely routine or clerical 89
nature, but requires the use of independent judgment, provided 90
that: 91

(1) Employees of school districts who are department 92
chairpersons or consulting teachers shall not be deemed 93
supervisors; 94

(2) With respect to members of a police or fire department, 95
no person shall be deemed a supervisor except the chief of the 96
department or those individuals who, in the absence of the chief, 97
are authorized to exercise the authority and perform the duties of 98
the chief of the department. Where prior to June 1, 1982, a public 99
employer pursuant to a judicial decision, rendered in litigation 100
to which the public employer was a party, has declined to engage 101
in collective bargaining with members of a police or fire 102
department on the basis that those members are supervisors, those 103
members of a police or fire department do not have the rights 104
specified in this chapter for the purposes of future collective 105
bargaining. The state employment relations board shall decide all 106
disputes concerning the application of division (F)(2) of this 107
section. 108

(3) With respect to faculty members of a state institution of 109
higher education, heads of departments or divisions are 110

supervisors; however, no other faculty member or group of faculty 111
members is a supervisor solely because the faculty member or group 112
of faculty members participate in decisions with respect to 113
courses, curriculum, personnel, or other matters of academic 114
policy; 115

(4) No teacher as defined in section 3319.09 of the Revised 116
Code shall be designated as a supervisor or a management level 117
employee unless the teacher is employed under a contract governed 118
by section 3319.01, 3319.011, or 3319.02 of the Revised Code and 119
is assigned to a position for which a license deemed to be for 120
administrators under state board rules is required pursuant to 121
section 3319.22 of the Revised Code. 122

(G) "To bargain collectively" means to perform the mutual 123
obligation of the public employer, by its representatives, and the 124
representatives of its employees to negotiate in good faith at 125
reasonable times and places with respect to wages, hours, terms, 126
and other conditions of employment and the continuation, 127
modification, or deletion of an existing provision of a collective 128
bargaining agreement, with the intention of reaching an agreement, 129
or to resolve questions arising under the agreement. "To bargain 130
collectively" includes executing a written contract incorporating 131
the terms of any agreement reached. The obligation to bargain 132
collectively does not mean that either party is compelled to agree 133
to a proposal nor does it require the making of a concession. 134

(H) "Strike" means continuous concerted action in failing to 135
report to duty; willful absence from one's position; or stoppage 136
of work in whole from the full, faithful, and proper performance 137
of the duties of employment, for the purpose of inducing, 138
influencing, or coercing a change in wages, hours, terms, and 139
other conditions of employment. "Strike" does not include a 140
stoppage of work by employees in good faith because of dangerous 141
or unhealthful working conditions at the place of employment that 142

are abnormal to the place of employment. 143

(I) "Unauthorized strike" includes, but is not limited to, 144
concerted action during the term or extended term of a collective 145
bargaining agreement or during the pendency of the settlement 146
procedures set forth in section 4117.14 of the Revised Code in 147
failing to report to duty; willful absence from one's position; 148
stoppage of work; slowdown, or abstinence in whole or in part from 149
the full, faithful, and proper performance of the duties of 150
employment for the purpose of inducing, influencing, or coercing a 151
change in wages, hours, terms, and other conditions of employment. 152
"Unauthorized strike" includes any such action, absence, stoppage, 153
slowdown, or abstinence when done partially or intermittently, 154
whether during or after the expiration of the term or extended 155
term of a collective bargaining agreement or during or after the 156
pendency of the settlement procedures set forth in section 4117.14 157
of the Revised Code. 158

(J) "Professional employee" means any employee engaged in 159
work that is predominantly intellectual, involving the consistent 160
exercise of discretion and judgment in its performance and 161
requiring knowledge of an advanced type in a field of science or 162
learning customarily acquired by a prolonged course in an 163
institution of higher learning or a hospital, as distinguished 164
from a general academic education or from an apprenticeship; or an 165
employee who has completed the courses of specialized intellectual 166
instruction and is performing related work under the supervision 167
of a professional person to become qualified as a professional 168
employee. 169

(K) "Confidential employee" means any employee who works in 170
the personnel offices of a public employer and deals with 171
information to be used by the public employer in collective 172
bargaining; or any employee who works in a close continuing 173
relationship with public officers or representatives directly 174

participating in collective bargaining on behalf of the employer. 175

(L) "Management level employee" means an individual who 176
formulates policy on behalf of the public employer, who 177
responsibly directs the implementation of policy, or who may 178
reasonably be required on behalf of the public employer to assist 179
in the preparation for the conduct of collective negotiations, 180
administer collectively negotiated agreements, or have a major 181
role in personnel administration. Assistant superintendents, 182
principals, and assistant principals whose employment is governed 183
by section 3319.02 of the Revised Code are management level 184
employees. With respect to members of a faculty of a state 185
institution of higher education, no person is a management level 186
employee because of the person's involvement in the formulation or 187
implementation of academic or institution policy. 188

(M) "Wages" means hourly rates of pay, salaries, or other 189
forms of compensation for services rendered. 190

(N) "Member of a police department" means a person who is in 191
the employ of a police department of a municipal corporation as a 192
full-time regular police officer as the result of an appointment 193
from a duly established civil service eligibility list or under 194
section 737.15 or 737.16 of the Revised Code, a full-time deputy 195
sheriff appointed under section 311.04 of the Revised Code, a 196
township constable appointed under section 509.01 of the Revised 197
Code, or a member of a township police district police department 198
appointed under section 505.49 of the Revised Code. 199

(O) "Members of the state highway patrol" means highway 200
patrol troopers and radio operators appointed under section 201
5503.01 of the Revised Code. 202

(P) "Member of a fire department" means a person who is in 203
the employ of a fire department of a municipal corporation or a 204
township as a fire cadet, full-time regular firefighter, or 205

promoted rank as the result of an appointment from a duly 206
established civil service eligibility list or under section 207
505.38, 709.012, or 737.22 of the Revised Code. 208

(Q) "Day" means calendar day. 209

Sec. 4117.03. (A) Public employees have the right to: 210

(1) Form, join, assist, or participate in, or refrain from 211
forming, joining, assisting, or participating in, except as 212
otherwise provided in Chapter 4117. of the Revised Code, any 213
employee organization of their own choosing; 214

(2) Engage in other concerted activities for the purpose of 215
collective bargaining or other mutual aid and protection; 216

(3) Representation by an employee organization; 217

(4) Bargain collectively with their public employers to 218
determine wages, hours, terms and other conditions of employment 219
and the continuation, modification, or deletion of an existing 220
provision of a collective bargaining agreement, and enter into 221
collective bargaining agreements; 222

(5) Present grievances and have them adjusted, without the 223
intervention of the bargaining representative, as long as the 224
adjustment is not inconsistent with the terms of the collective 225
bargaining agreement then in effect and as long as the bargaining 226
representatives have the opportunity to be present at the 227
adjustment. 228

(B) Persons on active duty or acting in any capacity as 229
members of the organized militia do not have collective bargaining 230
rights. 231

(C) Except as provided in division (D) of this section, 232
nothing in Chapter 4117. of the Revised Code prohibits public 233
employers from electing to engage in collective bargaining, to 234
meet and confer, to hold discussions, or to engage in any other 235

form of collective negotiations with public employees who are not 236
subject to Chapter 4117. of the Revised Code pursuant to division 237
(C) of section 4117.01 of the Revised Code. 238

(D) A public employer shall not engage in collective 239
bargaining or other forms of collective negotiations with the 240
employees of county boards of elections referred to in division 241
(C)~~(12)~~(11) of section 4117.01 of the Revised Code. 242

(E) Employees of public schools may bargain collectively for 243
health care benefits; however, all health care benefits shall 244
include best practices prescribed by the school employees health 245
care board, in accordance with section 9.901 of the Revised Code. 246

Section 2. That existing sections 4117.01 and 4117.03 of the 247
Revised Code are hereby repealed. 248