

FOP: Post-*Janus*

State Laws, Regulations & Proposed Legislation

File No. 10093-27992

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File No. 10093-27992

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MEMORANDUM

TO: FILE

FROM: CRABBE, BROWN & JAMES, LLP

DATE: August 17, 2018

RE: FOP: Post-*Janus* Policy

FILE NO: 10093-27992

The purpose of this Memorandum is to supplement the August 8, 2018 Crabbe, Brown & James Memorandum regarding Post-*Janus* Policy. We surveyed states where legislation exists addressing the duty of fair representation and public-sector employees to determine if carve-outs exist for police officers. To the extent a carve-out does exist, we have identified below.

Irrespective of any carve-out, the duty of fair representation remains unchanged by the *Janus* decision. States may decide to address the duty specifically, through the legislature, post-*Janus*. That is something to track moving forward.

SURVEY OF STATES*

1. Delaware

The Delaware Code provides a Chapter dedicated to police and firefighters. The same duty to represent employees without discrimination that applies to general employees in Delaware, applies to Delaware police and firefighters. Del. Code §§ 1304, 1604.

2. Hawaii

Hawaii does not carve out police officers separate from public employees. Police are covered under Hawaii Code §89-8 and entitled to representation without discrimination and regard to union membership the same as all Hawaii public employees.

3. Minnesota

Minnesota law does not distinguish between general public employees and police. The Minnesota Public Employment Labor Relations statute applies to all “public employees.” Minn. 179A.06.

4. New Hampshire

Public employee labor relations are governed under Chapter 273-A. Police officers are not separately carved out. Rather, a public employee covered under the law includes any person employed by a public employer with few specific exceptions.

5. Rhode Island

Rhode Island passed legislation on July 2, 2018 relieving municipal police officer and firefighter unions from the obligation to represent employees in grievances/arbitration if they were not members of the bargaining unit within 90 days prior to the event that caused the grievance. RI H7377.

The same, or similar legislation has been proposed for all municipal and state employees. See RI S2160; RI H7376.

*Note: **Michigan** law carved out public police from its right-to-work laws exempting public employees from paying union dues. Thus, public police were required to pay union dues. However, after *Janus*, that law is no longer enforceable.

MEMORANDUM

TO: FILE
FROM: CRABBE, BROWN & JAMES, LLP
DATE: August 8, 2018
RE: FOP: Post-*Janus* Policy
FILE NO: 10093-27992

The purpose of this Memorandum is to address FOP policy as it relates to representation of non-members post-*Janus*. In short, the FOP can look to the States to borrow language from proposed and passed legislation relating to *Janus* in the development of its policy. There are two options each with its own set of considerations. Option #1 includes the FOP continuing to cover expenses during the grievance process, irrespective of membership status. Option #2 includes the FOP retaining no obligation to incur expenses related to a grievance initiated by a non-member.

Finally, this Memorandum briefly address *Janus* and its impact on the duty of fair representation. To summarize, the Supreme Court provided a standard to apply for addressing a union's duty to fairly represent all employees. A union breaches its duty of fair representation if its actions are arbitrary, discriminatory, or in bad faith. *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65 (1991). *Janus* has done nothing to change the standard.

The outline below provides greater detail in addressing each point. Attached includes a summary of every state's legislative approach to the *Janus* decision and the duty of fair representation where applicable.

I. OPTION #1: The FOP will cover expenses incurred by all employees irrespective of membership during the grievance process.

There are two key considerations for the FOP in choosing to cover expenses incurred during the grievance process, irrespective of an employee's membership status.

- 1) Covering expenses incurred by members and non-members helps to defend the integrity of the agreement collectively bargained for. It gives the FOP a seat at the table to ensure portions of the agreement are not compromised by an employee's grievance. As the Court noted in *Janus*, "the resolution of one employee's grievance can affect others." See *Janus*, at 16.
- 2) A divide among employees only benefits management's position. Should only member grievance expenses be covered, resentment among employees will increase substantially.

The following states have similar policies:

a. **Hawaii**

Current Hawaii law states that an employee organization as exclusive representative "shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership." Haw. Rev. Stat. 89-9.

b. **Minnesota**

The Minnesota Association of Professional Employees stated post-*Janus* it will continue to represent and negotiate for all employees in its bargaining unit, irrespective of membership status.

c. **Montana**

Unions in Montana are charged with representing the interest of all employees in an exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment. Mont. Code Ann. 39-31-205.

II. OPTION #2: The FOP will advise all employees as to the basic contractual rights and responsibilities under the collective bargaining agreement, but retain no obligation to incur expenses related to a grievance initiated by non-member.

To alleviate concerns regarding any breach of the duty of fair representation, the FOP could adopt the following policy when faced with non-member grievances:

A designated representative may advise the non-member of the rights and responsibilities under the collective bargaining agreement. The employee may then, at his or her own expense, present a grievance to the employer and have such grievance heard without intervention from the FOP. The FOP shall retain its right to be present at the grievance proceeding and ensure that any adjustment made, shall not be inconsistent with the terms of the collective bargaining agreement. The FOP has no obligation to incur expenses related the grievance initiated by the non-member employee.

The proposed policy can come with an additional caveat: If the employee is not comfortable representing himself/herself in the grievance, the FOP would charge a fee (hourly or flat) for work put toward the grievance, or require the employee to reimburse the FOP for any expenses incurred.

Under the proposed policy, the only breach of duty of fair representation an employee could allege would be related the FOP's decision not to cover his/her expenses related to the grievance. Under the standard embraced by the Supreme Court—the decision not to cover a non-member's

grievance expenses would have to be considered *arbitrary, discriminatory, or in bad faith* for a breach to occur.

The benefit under Option #2 is cost savings. A result of *Janus* is lost revenue for the FOP. The FOP may seek to recoup those funds by saving on grievance expenses it has covered in the past. The risk here is the ability for the resolution of the grievance to compromise a portion of the collective bargaining agreement without input or intervention from the exclusive representative.

The following states have similar policies:

a. **New York**

Under present law public employee unions will not have to provide representation to non-members in any disciplinary cases as well as any legal, economic, or job-related services beyond what is provided in the collective bargaining agreement.

b. **Massachusetts**

Legislation introduced prior to *Janus* proposes a union has no obligation to incur expenses related to a grievance initiated by an employee who has elected not to maintain membership in the employee organization for a period of at least 90 days prior to the events giving rise to the grievance. The employee may, at his or her own expense, present a grievance to the employer and have such grievance heard without intervention from the union.

c. **Oregon**

Senate Bill 1524 would exempt unions from a duty to represent public employees who choose not to join and pay dues.

d. **Rhode Island**

Recent legislation in Rhode Island relieved municipal police officer and firefighter unions from their obligation to represent employees in grievances/arbitration if they were not members of the bargaining unit within 90 days prior to the event that caused the grievance. RI H7377.

e. **Vermont**

Consistent with state law in Vermont, the Vermont State Employees' Association charges an hourly fee for work performed by staff and attorneys on non-member grievances. The union continues to represent non-members without regard to their membership status.

III. DUTY OF FAIR REPRESENTATION

Janus does not directly impact the duty of fair representation. The *Janus* holding should be considered narrow in that the only immediate impact is that non-members are no longer required to pay fair share or "agency" fees to the union. Unions may still be considered an exclusive representative of the bargaining unit and **are still bound by the duty of fair representation**. That duty extends to members and nonmembers alike.

A union breaches its duty of fair representation if its actions are arbitrary, discriminatory, or in bad faith. *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65 (1991). *Janus* has done nothing to change that standard.

IV. OPEN QUESTIONS

There are many open questions still to be considered in light of *Janus*. Several examples are included below.

a. Opt-out Rules and Procedures

To the extent the collective bargain agreement contains opt-out rules and procedures they must be reconsidered. Post-*Janus* the Buckeye Institute, representing professors from Minnesota and Maine, successfully demanded their clients dismissal from their unions without waiting until the designated opt-out period. For example, under one of the agreements, the opt-out notice had to be written and submitted between April 1 and June 15. In light of *Janus* and with the Buckeye Institute's assistance, the professor was permitted to leave the union and cease paying dues immediately.

Furthermore, restrictive opt-out provisions in collective bargaining agreements have been struck down in the past. In *Saginaw Education Association v. Eady-Miskiewicz*, the Court found the one-month window to resign from the union was overly restrictive on the employee's right to refrain from union activity.¹

b. Strategies to Avoid Decrease in Membership

The FOP must consider strategies adopted in other states to avoid decrease in membership post-*Janus*. For example, in Washington public employers allow the union to meet privately with all new hires for at least 30 minutes. In New Jersey, public employers are required to provide contact information for new employees and allow unions access to the workplace and employer's email system for recruitment purposes.

¹ Please note Crabbe, Brown & James is preparing an Executive Summary on this case and how it may impact the FOP and duty of fair representation in a post-*Janus* world.

CATALOGUE OF STATE LAWS AND REGULATIONS

Alaska

Alaska is a fair share state. Prior to *Janus*, public employers in Alaska were allowed to require membership in a labor organization or employee's payment of fees for representation as conditions of employment. Alaska Stat. §23.40.110. Additionally, upon written authorization by a public employee, the employer shall deduct from the payroll of the employee the amount of fees and dues. Alaska Stat. §23.40.220. There is no legislation attempting to limit the duty of fair representation, nor is there any indication that Alaska is discussing such legislation.

California

California is a fair share state, pursuant to Cal. Gov't Code § 3508.5. Currently, the scope of representation for all public employees is found in § 3504, and includes all matters related to employment conditions and employer relations. In light of the *Janus* decision, California has a number of union-backed bills under discussion, including giving union members release time to recruit other members, shielding union member contact information, and allowing unions to charge non-members who use services to help them through a disciplinary process. (See "Unions Prepare to Lose in the Courthouse—and Win in the Statehouse," *Los Angeles Daily News*, March 2, 2018). No suggested legislation delineates between fair representation to non-members and members.

Colorado

Colorado is a fair share state and currently requires unlimited fair representation for all employees in a union. Colo. Rev. Stat. § 8-3-106 and 8-3-107. In January 2018, CO HB1030 was introduced to essentially make Colorado a right to work state, but the bill was "postponed indefinitely." There are presently no discussions of legislation to impact the duty of fair representation.

Connecticut

Unions in Connecticut "shall have the right to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership." Conn. Gen. Stat. § 5-271. Currently, Connecticut officials are preparing ways to bargain with unions to comply with *Janus*.

Soon after the ruling, Governor Malloy's administration said it will issue a notice to agencies regarding changes to procedures, but they would not comment further until solidifying these ideas. ("After Supreme Court Ruling, Malloy Administration Devising New Union Rules," *Hartford Courant*, June 29, 2018). There are no other current discussions regarding legislation to limit the duty.

Delaware

Del. Code Ann. Title 19 § 1303 provides public employees have the right to be represented by their exclusive representative without discrimination. § 1319 allowing fair share fees is no longer

permissible post-*Janus*. Delaware does not currently have any legislation or discussions on limiting the duty of fair representation.

Hawaii

Hawaii is a fair share state, allowing dues to be deducted from the payroll of every non-member employee in a bargaining unit. Haw. Rev. Stat. § 89-4. Current Hawaii law states that an employee organization as exclusive representative “shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.” Haw. Rev. Stat. § 89-8.

However, there was a bill introduced in preparation for the *Janus* decision which would amend §89-8 to add that “except that in the grievance-arbitration procedure, it need not represent employees who do not pay reasonable costs of representation.” (Hawaii SB2369). It appears that this bill failed—however, another bill was introduced which would set up a direct payment system in the state, replacing the previous fair-share fees with requirements that public employers subsidize unions directly by deducting every employee’s salary by the amount of the fee, regardless of if they are a member or non-member (*see* HI HB923 and “How to Save Public Sector Unions,” *Slate*, June 27, 2018). This is the only pending legislation in Hawaii regarding the *Janus* decision at present.

Illinois

HB 4468 seeks to amend Illinois law to exempt certain security employees, peace officer units, and units of fire fighters or paramedics from provisions which limit the subject matter of collective bargaining to employee wages only. Discussions about other legislative solutions to *Janus* include the government paying unions for bargaining in place of fair share payments, and charging non-members for certain services that fall under the duty to represent all members. (“Illinois Unions Eye *Janus* Workaround Strategies,” *Bloomberg Law*, July 5, 2018.)

Additionally, a federal lawsuit attempts to declare the fair representation section of Illinois public labor law to be unconstitutional, stating:

If, however, it violates the First Amendment right of a non-member to be compelled to pay fees to the union that is required by law to provide representation and services, it equally violates the rights of the union and its members to require them to use their money to speak on behalf of the non-member. This is so because the right to speak and the right not to speak are two sides of the same coin. Hence, the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all. Similarly, freedom of association plainly presupposes a freedom not to associate.

(*See Sweeney and International Union of Operating Engineers’ Complaint for Declaratory Relief*, February 22, 2018, page 4).

Maine

Maine is a fair share state which, prior to *Janus*, required non-member public employees to pay service fees for benefits from the bargaining agent (*See* Me. Rev. Stat. 26 § 979-B and § 963). There is currently no pending legislation or discussions on the duty of fair representation.

Maryland

Maryland is a fair share state, and prior to *Janus*, allowed employee organizations to receive service fees from non-members (Md. Code Ann., State Pers. & Pens. § 3-301 and § 3-502). There are no current discussions or pending legislation concerning the duty of fair representation.

Massachusetts

House Bill 1003 proposed prior to *Janus*, has the status of "in committee," and deals with grievances by non-members:

Section 1: Chapter 150 of the General laws is hereby amended by striking section 5 and 2 inserting in its place the following new section: Section 5. The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit. Nothing in the provision shall require the exclusive representative to provide representation at any level of the grievance process including arbitration in any case on behalf of an employee who has elected not to maintain membership in the employee organization for a period of at least 90 days prior to the events giving rise to the grievance. An employee who has elected not to maintain membership in the employee organization may, at his or her own expense, present a grievance to the employer and have such grievance heard without intervention by the exclusive representative, provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative. The exclusive representative shall have no obligation to incur expenses related to a grievance initiated by an employee who has elected not to maintain membership in the employee organization for a period of at least 90 days prior to the events giving rise to the grievance. Section 2: Section 2 of Chapter 150E is amended in section 2 by striking the following: "except to the extent of making such payment of service fees to an exclusive representative as provided in section twelve." Section 3: Section 12 of Chapter 150 E of the General Laws is hereby repealed.

Additionally, proposed House Bill 1346 would replace the current first paragraph of Ch. 150E Section 12 with a new paragraph which eliminates the language that payment of service fees be required as a condition of employment *during the life of a collective bargaining agreement so providing*. The proposed paragraph still requires payment of service fees, but not necessarily during the life of the collective bargaining agreement.

After the *Janus* decision, Massachusetts House Speaker Robert DeLeo made a statement that lawmakers are discussing legislation "to soften the blow" for unions:

DeLeo said that the details of any potential legislation are far from settled and that lawmakers plan to speak with union leaders to find “a consensus that we can support.” But he indicated the Legislature intends to move fast. He said he hopes to move a bill to the House floor before the legislative session wraps up at the end of July. The top leader in the Senate, President Harriette L. Chandler, also hopes to craft a bill by then, according to an aide.

(“Legislatures Weighing Bill to ‘Soften Impact’ of Supreme Court Ruling on Unions,” *The Boston Globe*, June 27, 2018).

Minnesota

Until the *Janus* decision, Minnesota has been a fair-share state, requiring non-members to pay monthly fees in order to cover the cost of benefits (*see* Minn. Stat. § 179A.06). There is no current legislation limiting the scope of the duty of fair representation in Minnesota, nor are there any discussions of implementing such legislation. Current statutory law consistently refers to representation of all employees, and does not delineate between non-members and members in any way (unlike New York legislation). In fact, Minnesota Association of Professional Employees stated that they will continue to represent and negotiate for all employees in its bargaining unit, without mention of any limits.

Missouri

Missouri voted on August 7, 2018 against a right to work law for private sector employees. There is no pending legislation concerning public employees.

Montana

Prior to *Janus*, Montana permitted “agency shop” agreements for public sector unions. Mont. Code Ann. § 39-31-401. In Montana, the chosen exclusive representative must comply with a duty of fair representation to all employees in the unit, whether or not they are union members. *See Ford v. University of Montana*, 598 P.2d 604 (Mont. 1979); *Teamsters Local No. 45 v. State*, 724 P.2d 189 (Mont. 1986). Labor organizations are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment. Mont. Code Ann. § 39-31-205. Montana State legislature is not in session in 2018 and there is no pending legislations or discussion to alter duty of representation.

New Hampshire

Under the New Hampshire Employee Labor Relations Act, an individual employee may present an oral grievance to his employer without the intervention of the exclusive representative. Until the grievance is reduced to writing, the exclusive representative shall be excluded from a hearing if the employee so requests; but any resolution of the grievance shall not be inconsistent with the terms of an existing agreement between the parties. NH 273-A:11.

Furthermore, it is prohibited for an exclusive representative of any public employee to discriminate against any public employee whose membership in an employee organization has been denied or

terminated for reasons other than failure to pay membership dues. NH 273-A:5. There is no pending legislation nor discussion of legislation altering a public-sector union's duty of fair representation, however, Republican sources say the view in the governor's office is that ending the collection of union dues from the affected state workers – and setting up an “opt in” provision – will be an administrative procedure.

New Jersey

New Jersey adopted the Workplace Democracy Enhancement Act. The act:

- Requires that employers provide contact information for new employees.
- Requires that employers allow unions access to the workplace and the employer's email system to contact new employees for the purpose of recruiting them to join the union.
- Prohibits employers from encouraging employees to resign from or relinquish membership in a union or to revoke the deduction of union dues.
- The DEA amends existing law to provide that union fee deductions may be authorized by means of electronic communication and electronic signatures
- Also, the Act modifies the procedures for an employee to withdraw authorization for payroll deduction of fees to employee organizations. The Act provides that an employee do so by providing written notice to their public employer during the 10 days following each anniversary date of the employee's employment, and the public employer is then required to inform the employee organization of the withdrawal. A withdrawal would take effect on the 30th day after the anniversary date.

New Mexico

In New Mexico, an employee, acting individually, may present a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative. NM 10-7E-15. There is no pending legislation nor discussion of legislation altering a public-sector union's duty of fair representation.

New York

In anticipation of the *Janus* decision New York passed the Taylor Law. The law in effect states that a union does not violate its duty of fair representation by denying representation to non-members in matters beyond what is spelled out in the collective bargaining agreement. The most important change to the Taylor Law relates to the Duty of Fair Representation. The new legislation provides that public employee unions will not have to provide representation to non-members in any disciplinary cases as well as any legal, economic, or job-related services beyond those provided in the collective bargaining agreement.

Public employers must also allow a duly appointed representative to meet with new employees at the work site during work time for a reasonable amount of time without requiring employees to

charge leave time. Additionally, employee organizations are now permitted to use electronic membership cards.

One other significant change to the Taylor Law addresses the “churn” problem that has occurred when members have gone out on voluntary or involuntary leave and been reinstated as agency fee payers upon their return. Now, when members return to the same employer after voluntary or involuntary leave, they will return as members and the right to deduct dues will be automatically reinstated. See below for proposed legislation relating to public sector unions.

- S05778: A public employer shall commence making deductions of membership dues in an employee organization pursuant to a public employee’s signed authorization as soon as practicable but in no case later than 30 days after receiving proof of a signed authorization. Status: Committed to Rules
- NYA05694: AN ACT to amend the civil service law, in relation to removing the requirement that a public employer continue terms of an expired agreement until a new agreement is negotiated with an employee organization. Status: Held for consideration in governmental employees
- NY A10370: AN ACT to amend the civil service law, in relation to the negotiability of disciplinary procedures affecting employees in the competitive class of civil service of the state of New York or any civil division thereof The People of the State of New York, represented in Senate and Assembly. Declares that all competitive class employees are entitled to collective bargaining with respect to matters pertaining to disciplinary procedures. Status: Referred to governmental employees
- NY A00324: Allows employee organizations an opportunity to reconsider and re-vote on a written agreement that was initially voted down.

Ohio

Prior to *Janus*, Ohio was a fair share state. On July 7, 2018, Senate President Larry Obhof said “there really isn’t a need for (right to work) legislation,” as the Court had ended the union shop for public employees. Ohio House Bill 53, introduced in late 2017, proposes to change parts of Ohio’s collective bargaining law. House Bill 53 may eliminate the “free rider”, because the bill would require employee organizations to only represent employees who are dues-paying members of the exclusive representative. Thus, only public employees in an appropriate bargaining unit who are members of the union would be eligible to collectively bargain with the Ohio public employer. Status Referred to Finance Committee 2/14/17.

- HJR 11: Proposing to enact Section 12 of Article XV of the Constitution of the State of Ohio to subject any public employee collective bargaining representative to an annual election to remain certified as the exclusive representative. Status: Referred to committee.

Oregon

In Oregon, any individual employee or group of employees has the right at any time to present grievances to the individual's or group's employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract. ORS 663.020.

- OR SB1524: This bill prohibits union security agreements between public employer and union and permits public employees to choose not join union or pay union dues. In addition, it exempts unions from duty to represent public employees who choose not join or pay union dues. Status: In committee upon adjournment.

Pennsylvania

Prior to *Janus*, Pennsylvania was a fair share state. 43 P.S. § 1102.3. There is no pending legislation nor discussion of legislation altering a public-sector union's duty of fair representation however see below for proposed legislation affecting public sector unions.

- PA SB166: An Act providing for protection of paychecks of certain workers and for the collection of political contributions. Status: defeated on final passage.
- PA SB168: An Act providing for notice and disclosure of proposed collective bargaining agreements and related documents and for open records. Status: Laid on table.
- PA HB53: This act repeals fair share fees. Status: Referred to State government.
- PAHB920: An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, deleting and replacing provisions relating to collective bargaining between public school employees and their public employers; setting forth public policy relating to public school employee strikes; providing for assessments and for duties of the Bureau of Mediation and the Pennsylvania Labor Relations Board; and imposing penalties.
- PA HB418: An Act providing for transparency in public employment collective bargaining. Status: Referred to Labor and Industry.

Rhode Island

Rhode Island recently passed legislation relieving municipal police officer and firefighter bargaining representatives from their obligation to represent employees in grievances/ arbitration if they were not members of the bargaining unit within 90 days prior to the event that caused the grievance. RI H7377.

- RI S2160: Relieves *municipal* employee bargaining representatives from their obligation to represent employees in grievances/arbitrations if they were not members of the bargaining unit in the ninety (90) days prior to the events that caused the grievance. Status: Committee recommended measure be held for further study.
- RI H7376: Relieves *state* employee bargaining representatives from their obligation to represent employees in grievances/arbitrations if they were not members of the bargaining

unit in the ninety (90) days prior to the events that caused the grievance. Status: Committee recommended measure be held for further study.

Vermont

Prior to *Janus*, Vermont was a fair share state. 21 V.S.A. § 1503. The Vermont State Employees' Association, which represents state employees, states that they will continue to represent non-members without regard to their membership status; however, VSEA will begin charging an hourly fee for work performed by VSEA staff representatives or attorneys on grievances or disciplinary matters. This fee is consistent with Vermont law and with longstanding VSEA policies that preceded agency fees. 21 V.S.A. § 1583.

- VTH0642: This bill proposes to permit employees to elect a collective bargaining representative through card check elections; to require employers to provide employee contact information in relations to an effort to organize a bargaining unit; to require employees who chose not to join a union and who do not pay a collective bargaining service fee or agency fee to reimburse the union for the cost of representing them in a grievance proceeding; to repeal collective bargaining service fee provisions that have been ruled unconstitutional; to amend the law related to the use of State grant funds in relation to union organizing; and to establish a good cause standard for termination of employment in Vermont. Status: House Committee on General, Housing, and Military Affairs Hearing.

Washington

In Washington, any public employee at any time may present his or her grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance. RCW 41.56.080.

Washington modified its law in anticipation of the *Janus* decision. Specifically, the law: Removed the requirement that employers receive employee written authorization in order to enforce a union security provision in a collective bargaining agreement and deduct from the payments of bargaining unit members the dues required for union members, or for nonmembers, a fee equivalent to dues; Removed the requirement that written employee authorizations be filed with the employer. This law may no longer be legal because it creates an affirmative opt-out policy for workers who don't want to pay union dues.

On June 7, 2018, Washington passed a law that required public employers to let unions meet privately with new hires for least 30 minutes.

- House Bill 2751: AN ACT Relating to the deduction of union dues and fees.
- House Bill 1607: AN ACT Relating to requiring periodic certification elections for labor unions representing public employees; and amending Status: In Committee.
- Senate Bill 5545: An Act relating to protecting public sector workers rights through public disclosure of public sector unions' finances.

The following right-to-work states will see little to no impact from the *Janus* decision: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

Alaska

Sec. 23.40.110. Unfair labor practices.

(a) A public employer or an agent of a public employer may not

(1) interfere with, restrain, or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080;

(2) dominate or interfere with the formation, existence, or administration of an organization;

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given testimony under AS 23.40.070 - 23.40.260;

(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(b) Nothing in this chapter prohibits a public employer from making an agreement with an organization to require as a condition of employment

(1) membership in the organization which represents the unit on or after the 30th day following the beginning of employment or on the effective date of the agreement, whichever is later; or

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining agent for the expense of representing the members of the bargaining unit.

(c) A labor or employee organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in AS 23.40.080, or

(B) a public employer in the selection of the employer's representative for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of AS 23.40.070 - 23.40.260 as the exclusive representative of employees in an appropriate unit.

Sec. 23.40.220. Labor or employee organization dues and employee benefits, deduction and authorization.

Upon written authorization of a public employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues, fees, and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative.

California



GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7914] (*Title 1 enacted by Stats. 1943, Ch. 134.*)

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599] (*Division 4 enacted by Stats. 1943, Ch. 134.*)

CHAPTER 10. Local Public Employee Organizations [3500 - 3511] (*Heading of Chapter 10 amended by Stats. 1971, Ch. 254.*)

3504. The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(*Amended by Stats. 1968, Ch. 1390.*)



GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7914] (*Title 1 enacted by Stats. 1943, Ch. 134.*)

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599] (*Division 4 enacted by Stats. 1943, Ch. 134.*)

CHAPTER 10. Local Public Employee Organizations [3500 - 3511] (*Heading of Chapter 10 amended by Stats. 1971, Ch. 254.*)

- 3508.5.** (a) Nothing in this chapter shall affect the right of a public employee to authorize a dues or service fees deduction from his or her salary or wages pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.
- (b) A public employer shall deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the public employer.
- (c) Agency fee obligations, including, but not limited to, dues or agency fee deductions on behalf of a recognized employee organization, shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the public employer and the recognized employee organization.
- (*Amended by Stats. 2000, Ch. 901, Sec. 6. Effective January 1, 2001.*)

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C.R.S. 8-3-106**Copy Citation**

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Colorado Revised Statutes **TITLE 8. LABOR AND INDUSTRY** **LABOR I -**
DEPARTMENT OF LABOR AND EMPLOYMENT **ARTICLE 3. LABOR PEACE ACT**

8-3-106. Rights of employees

In accordance with the provisions of this article, employees have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Each employee also has the right to refrain from any of such activities. The rights of each employee are essential rights, and nothing contained in this article shall be so construed as to infringe upon or have any operation against or in conflict with such rights.

History

Source:

L. 43: p. 397, § 4. CSA: C. 97, § 94(4). CRS 53: § 80-5-4. C.R.S. 1963: § 80-4-4.

▼ Annotations**Case Notes**

ANNOTATION

Law reviews. For article, "The Regional Transportation District Strike and the Colorado Labor Peace Act: A Study in Public Sector Collective Bargaining", see 54 U. Colo. L. Rev.



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Colorado Revised Statutes **TITLE 8. LABOR AND INDUSTRY** **LABOR I -**
DEPARTMENT OF LABOR AND EMPLOYMENT **ARTICLE 3. LABOR PEACE ACT**

8-3-107. Representatives and elections

(1) A unit chosen for the purpose of collective bargaining shall be the exclusive representative of all of the employees in such unit, if the majority of the employees of one employer, or the majority of the employees of one employer in a craft, vote at an election. But employees individually have the right at any time to present grievances to their employer in person or through representatives of their own free choosing, and the employer shall confer with them in relation thereto.

(2) When a question arises concerning the selection of a collective bargaining unit, it shall be determined by secret ballot, and the director, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department, or plant as to the selection of the collective bargaining unit.

(3) When a question arises concerning the selection of a collective bargaining unit, the director shall determine the question thereof by taking a secret ballot of employees and certifying in writing the results thereof to the bargaining units involved and to their employer. There shall be included on any ballot for the selection of a bargaining unit the names or suitable description of each bargaining unit submitted to the director and claimed to be the appropriate unit by an employee or group of employees participating in the election; except that the director, in his discretion, may exclude from the ballot any bargaining unit which, at the time of the election, stands deprived of its rights under this article by reason of a prior adjudication of its having engaged in an unfair labor practice. The ballot shall be so prepared as to permit a vote against representation by any unit named on the ballot. The director's certification of the results of any election shall be conclusive as to the findings included

therein, unless reviewed in the manner provided by section 8-3-110 (8), for review of orders of the director.

(4) Questions concerning the selection of collective bargaining units may be raised by petition of any employee or his employer or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the director shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the director that sufficient reason therefor exists.

(5) The director shall investigate and determine which persons shall be qualified and entitled to vote at any election held by him and shall prepare and certify a poll list of such qualified voters and shall file the same in the office of the director not later than twenty-four nor earlier than forty-eight hours preceding the time of such balloting. The list shall be available to the collective bargaining units whose interests are involved in the election. On request of any employee, the list shall be prepared so as to show separately which employees are entitled to vote for general representation of the employees and which employees are entitled to vote separately for craft representation or representation of any one of several plants of a common employer. No person whose name is not so certified shall be entitled to vote at such election. The director shall protect the secrecy of the ballot and shall take all proper measures for the accurate counting thereof and shall certify the result thereof and immediately file such certificate in the records of the division and make the same available for the inspection of any person interested. The bargaining units so elected and certified shall be the respective representatives of the employees so electing them and recognized as such under this article. The names of all persons voting at the election for the selection of a bargaining unit shall be certified to the division and filed in its records and shall constitute the voting roll for said bargaining unit for all purposes under this article. The name of any person leaving such employment shall be removed from the roll; except that any employee whose name appears on said voting roll may have his name withdrawn from said roll by notice in writing to the division.

History

Source:

L. 43: p. 398, § 5. CSA: C. 97, § 94(5). CRS 53: § 80-5-5. C.R.S. 1963: § 80-4-5. L. 69: p. 595, § 74. L. 86: (3) amended, p. 470, § 25, effective July 1.

▼ Annotations

Case Notes

ANNOTATION

I. General Consideration.

Connecticut

411 amended Subsec. (g), removing the percentage cap on the number of managerial employees, and requiring the provisions of Subpara. (D) to be satisfied for any position in the system of higher education to be considered managerial, effective July 1, 1986, and applicable to negotiations then in progress; (Revisor's note: In 1995 the Revisors editorially substituted in Subdiv. (c) the alphabetic indicators (A), (B), (C) and (D) for (i), (ii), (iii) and (v) for consistency with statutory usage); P.A. 97-148 amended Subsec. (b) to include special deputy sheriffs, effective July 1, 1997; P.A. 01-103 deleted former Subdiv. (2) re certain Department of Correction employees, redesignated existing Subparas. (A) to (D) as Subdivs. (1) to (4), and made conforming technical changes; P.A. 05-256 redefined "employee" in Subsec. (b) to include disability policy specialists assigned to the Council on Developmental Disabilities, effective July 1, 2005.

Cited. 184 C. 578; 226 C. 670.

Subsec. (f):

Subsec. not unconstitutionally vague. 204 C. 746.

Subsec. (g):

Subsec. not unconstitutionally vague. 204 C. 746. Language plainly and unambiguously does not include requirement that managerial employees exercise independent judgment in carrying out principal functions listed in Subdivs. (2) and (3). 296 C. 594.

Classification of managerial employees and denial to them of collective bargaining rights survives challenge on equal protection grounds; statute repels vagueness challenge, is not offensive to due process requirements. 40 CS 381.

(Return to Chapter (Return to (Return to
Table of Contents) List of Chapters) List of Titles)

Sec. 5-271. Rights of employees and representatives. Duty of fair representation. (a) Employees shall have, and shall be protected in the exercise of the right of self-organization, to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment, except as provided in subsection (d) of section 5-272, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion.

(b) When an employee organization has been designated by the State Board of Labor Relations as the representative of the majority of employees in an appropriate unit, that employee organization shall be recognized by the employer as the exclusive bargaining agent for the employees of such unit.

(c) When an employee organization has been designated in accordance with the provisions of this chapter as the exclusive representative of employees in an appropriate unit, it shall have the right to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

(d) When an employee organization has been designated, in accordance with the provisions of this chapter, as the exclusive representative of employees in an appropriate unit, it shall have a duty of fair representation to the members of that unit.

(e) An individual employee at any time may present a grievance to his employer and have the grievance adjusted, without intervention of an employee organization, provided the adjustment shall not be inconsistent with the terms of a collective bargaining agreement then in effect. The employee organization designated as the exclusive representative shall be given prior notice of the grievance and shall be informed of the terms of the settlement.

(f) The employer and such employee organization as has been designated as exclusive representative of employees in an appropriate unit, through appropriate officials or their representatives, shall have the duty to bargain collectively. This duty extends to the obligation to bargain collectively as set forth in subsection (c) of section 5-272.

(P.A. 75-566, S. 2.; P.A. 93-426, S. 2.)

History: P.A. 93-426 inserted new Subsec. (d) to impose a duty of fair representation on employee organizations representing state employees and redesignated existing Subsecs. (d) and (e) as (e) and (f), respectively.

Cited. 192 C. 539; 201 C. 685.

Cited. 40 CS 381.

[\(Return to Chapter Table of Contents\)](#) [\(Return to List of Chapters\)](#) [\(Return to List of Titles\)](#)

Sec. 5-272. Prohibited acts of employers and employee organizations. (a) Employers or their representatives or agents are prohibited from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 5-271 including a lockout; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under sections 5-270 to 5-280, inclusive; (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit; including but not limited to refusing to discuss grievances with such exclusive representative; (5) discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization; (6) refusing to induce a collective bargaining agreement to writing and to sign such agreement; (7) violating any of the rules and regulations established by the board regulating the conduct of representation elections.

(b) Employee organizations or their agents are prohibited from: (1) Restraining or coercing employees in the exercise of the rights guaranteed in subsection (a) of section 5-271; (2) restraining or coercing an employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; (3) refusing to bargain collectively in good faith, with an employer, if it has been designated in accordance with the provisions of sections 5-270 to 5-280, inclusive, as the exclusive representative of employees in an appropriate unit; (4) breaching their duty of fair representation pursuant to section 5-271; (5) violating any of the rules and regulations established by the board regulating the conduct of representation elections; or (6) refusing to reduce a collective bargaining agreement to writing and sign such agreement.

(c) For the purposes of sections 5-270 to 5-280, inclusive, to bargain collectively is the performance of the mutual obligation of the employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process, and bargain in good faith with respect to wages, hours and other conditions of employment, except as provided in subsection (d) of this section, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

(d) Nothing herein shall diminish the authority and power of the Employees' Review Board, the Department of Administrative Services or any state agency established by statute, charter or special act to establish, conduct and grade merit examinations and to rate candidates in order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the state served by the Department of Administrative Services. The establishment, conduct and grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the appointments from such lists shall not be subject to collective bargaining.

(P.A. 75-566, S. 3; P.A. 77-614, S. 118, 610; P.A. 80-483, S. 150, 186; P.A. 81-472, S. 2, 159; P.A. 93-426, S. 3; P.A. 03-278, S. 11.)

History: P.A. 77-614 replaced personnel department and personnel policy board with department of administrative services in Subsec. (d); P.A. 80-483 changed "appeals" to "appeal" in board's name in Subsec. (d); P.A. 81-472 amended Subsec. (d) to refer to the employee's review board, rather than the personnel appeal board; P.A. 93-426 inserted a new Subdiv. (4) in Subsec. (b) to prohibit an employee organization which represents state employees from breaching its duty of fair representation to its members and redesignated existing Subdivs. (4) and (5) as (5) and (6), respectively; P.A. 03-278 made a technical change in Subsec. (b), effective July 9, 2003.

See Sec. 5-226f re pilot program authorizing discussion between the state and union representatives concerning the state classifications and examination system.

Cited. 192 C. 539; 197 C. 91; 201 C. 685; 216 C. 253; 226 C. 670.

Cited. 8 CA 197.

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Sec. 5-273. Powers of State Board of Labor Relations. The State Board of Labor Relations shall administer sections 5-270 to 5-280, inclusive, as follows:

(a) The board shall exercise those powers and perform those duties which are specifically provided for in said sections. Those powers and duties shall be in addition to and exercised completely independent of any powers and duties specifically granted to it by statutory enactment.

(b) The board shall have authority, from time to time, to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of sections 5-270 to 5-280, inclusive. Such rules and regulations shall be effective upon passage, in conformance with the terms of chapter 54.

(P.A. 75-566, S. 4.)

Cited. 43 CS 1.

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Sec. 5-274. Prohibited practice questions determined by State Board of Labor Relations. Whenever a question arises as to whether a practice prohibited by sections 5-270 to 5-280, inclusive, has been committed by an employer or employee organization, the board shall consider that question in accordance with the following procedure:

(a) When a complaint has been made to the board in writing that a prohibited practice has been or is being committed, the board shall refer such complaint to its agent for investigation within ten calendar days of the date it was received. Upon receiving a report from the agent, the board may within ten days of such receipt issue an order dismissing the complaint or may order a further investigation or a hearing thereon. When an investigation is ordered the board shall set a time when the report must be made. When a hearing is ordered, the board shall set the time and place for the hearing, which time and place may be changed by the board at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the board. The employer, the employee organization and the person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as the board may limit. Such employer, such employee organization and such person shall have the right to appear in person or otherwise to defend against such complaint. In the discretion of the board any person may be allowed to

Delaware

**Part I
General Provisions**

Chapter 13

PUBLIC EMPLOYMENT RELATIONS ACT

§ 1301 Statement of policy.

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public employer. These policies are best effectuated by:

- (1) Granting to public employees the right of organization and representation;
 - (2) Obligating public employers and public employee organizations which have been certified as representing their public employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations; and
 - (3) Empowering the Public Employment Relations Board to assist in resolving disputes between public employees and public employers and to administer this chapter.
- (69 Del. Laws, c. 466, § 1.)

§ 1302 Definitions.

(a) "Appropriate bargaining unit" or "bargaining unit" means a group of public employees designated by the Public Employment Relations Board as appropriate for representation by an employee organization for purposes of collective bargaining.

(b) "Binding interest arbitration" means the procedure by which the Public Employment Relations Board shall make written findings of fact and a decision for final and binding resolution of an impasse arising out of collective bargaining.

(c) "Board" means the Public Employment Relations Board established by § 4006 of Title 14 and made applicable to this chapter by § 1306 of this title.

(d) "Certification" means official recognition by the Board, following a secret-ballot election or demonstration of majority representation in accordance with § 1311A(c) of this title, that an employee organization is the exclusive representative for all employees in an appropriate bargaining unit.

(e) "Collective bargaining" means the performance of the mutual obligation of a public employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

(f) "Confidential employee" means any employee whose essential job function and advanced knowledge about the issues involved in collective bargaining would make it unduly burdensome for the employer to negotiate effectively if the employee were a member of an appropriate bargaining unit.

(g) "Decertification" means the withdrawal by the Board of an employee organization's official designation as exclusive representative following a decertification election which shows that the exclusive representative no longer has the support of a majority of the members in an appropriate bargaining unit.

(h) "Discretionary subject" means, for the State as an employer only, any subject covered by merit rules which apply pursuant to § 5938(c) of Title 29, and which merit rules have been waived by statute.

(i) "Employee organization" means any organization which admits to membership employees of a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

(j) "Exclusive bargaining representative" or "exclusive representative" means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit.

(k) "Fair share fee" means a fee that a nonmember shall be required to pay to the nonmember's exclusive representative to offset the nonmember's pro rata share of the exclusive representative's expenditures. Such fee shall be equal in amount to regular membership dues that a member of the exclusive representative's affiliated organizations, provided that the exclusive representative establishes and maintains a procedure by which any nonmember fee payer may obtain a rebate.

(l) "Impasse" means the failure of a public employer and the exclusive bargaining representative to reach agreement in the course of collective bargaining.

(m) "Mediation" means an effort by an impartial third-party confidentially to assist in reconciling an impasse between the public employer and the exclusive bargaining representative regarding terms and conditions of employment.

(n) "Nonmember" means an employee who is not a member of the exclusive representative but whom the exclusive representative is required to represent pursuant to this chapter.

(o) "Public employee" or "employee" means any employee of a public employer except:

- (1) Any person elected by popular vote or appointed to office by the Governor;
- (2) Any person who is a prisoner or inmate or who is otherwise held in lawful custody by an agency of the State;
- (3) Any person appointed to serve on a board or commission;
- (4) Any employee, as defined in Chapter 40 of Title 14 of a public school employer, as defined in Chapter 40 of Title 14;

(5) Any police officers and firefighters employed by the State or political subdivisions of the State or any agency thereof, or any municipal corporation, municipality, city or town located within the State or any agency thereof which, upon the affirmative legislative act of its common council or other governing body, has elected to come within Chapter 16 of this title, or which hereafter elects to come within Chapter 16 of this title. Any police officers and firefighters included in this subsection shall be subject to Chapter 16 of this title;

(6) Confidential employees of the public employer; and

(7) Supervisory employees of the public employer, provided however, that any supervisory position in a bargaining unit deemed to be appropriate prior to September 23, 1994, shall so continue, unless said unit is decertified in accordance with § 1311(b) of this title, or is modified in accordance with procedures authorized by § 1310(e) of this title.

(p) "Public employer" or "employer" means the State, any county of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13 of this title or which hereafter elects to come within this chapter, or which employs 100 or more full-time employees.

(q) "Rebate" means that portion of a nonmember's pro rata share of the expenditures of the exclusive representative which are not made for purposes pertaining to the collective bargaining process, contract administration or pursuit of matters affecting wages, hours and other conditions of employment.

(r) "Strike" means a public employee's failure, in concerted action with others, to report for duty, or a public employee's wilful absence from a public employee's position, or a public employee's stoppage or deliberate slowing down of work, or a public employee's withholding in whole or in part from the full, faithful and proper performance of a public employee's duties of employment, or a public employee's involvement in a concerted interruption of operations of a public employer for the purpose of inducing, influencing or coercing a change in the conditions, compensation rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to terms and conditions of employment.

(s) "Supervisory employee" means any employee of a public employer who has the authority, in the interest of the public employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such actions, if the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

(t) "Terms and conditions of employment" means matters concerning or related to wages, salaries, hours, grievance procedures and working conditions; provided however, that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public employer.

(19 Del. C. 1953, § 1301; 55 Del. Laws, c. 126; 57 Del. Laws, c. 669, §§ 2A, 14A; 59 Del. Laws, c. 156, § 1; 65 Del. Laws, c. 477, § 2; 67 Del. Laws, c. 294, § 1; 67 Del. Laws, c. 404, § 6; 69 Del. Laws, c. 466, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 272, §§ 1, 7; 73 Del. Laws, c. 353, §§ 1-3; 74 Del. Laws, c. 173, § 2; 76 Del. Laws, c. 178, § 2.)

§ 1303 Public employee rights.

Public employees shall have the right to:

- (1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.
- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.
- (4) Be represented by their exclusive representative, if any, without discrimination.

(19 Del. C. 1953, §§ 1302, 1303; 55 Del. Laws, c. 126; 69 Del. Laws, c. 466, § 1.)

§ 1304 Employee organization as exclusive representative.

(a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

(b) Nothing contained in this section shall prevent employees individually, or as a group, from presenting complaints to a public employer and from having such complaints adjusted without the intervention of the exclusive representative for the bargaining unit of which they are a part, as long as the representative is given an opportunity to be present at such adjustment and to make its view known, and as long as the adjustment is not inconsistent with the terms of an agreement between the public employer and the exclusive

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representative which is then in effect. The right of the exclusive representative shall not apply where the complaint involves matters of personal, embarrassing and confidential nature, and the complainant specifically requests, in writing, that the exclusive representative not be present.

(c) The public employer shall deduct from the payroll of the public employee the monthly amount of dues or service fee as certified by the secretary of the exclusive bargaining representative and shall deliver the same to the treasurer of the exclusive bargaining representative as follows:

(1) In compliance with § 1319 of this title.

(2) If the collective bargaining agreement does not contain a provision enforceable under § 1319 of this title, upon the written authorization of any public employee within a bargaining unit. Authorization under this paragraph (c)(2) is revocable at the employee's written request as follows:

a. If the revocation period is established by the terms of the authorization, the terms of the authorization must have 1 or more revocation periods annually and authorization may be revoked as follows:

1. In the manner established by the terms of the authorization and effective as provided by the terms of the authorization.

2. If the manner for revocation is not established by the terms of the authorization, by a request to the exclusive bargaining representative.

3. If the effective date of a revocation is not established by the terms of the authorization, the revocation is effective on the employee's anniversary date.

b. If the authorization does not specify a revocation period, by a request to the employer during the period 15 to 30 days before the employee's anniversary date of employment, effective on the employee's anniversary date.

(3) A deduction under subsection (c) of this section commences upon the exclusive representative's written request to the employer. Such right to deduction remains in force for so long as the employee organization remains the exclusive bargaining representative for the employees in the unit.

(d) The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments levied on members by the exclusive representative.

(19 Del. C. 1953, § 1303; 55 Del. Laws, c. 126; 69 Del. Laws, c. 466, § 1; 81 Del. Laws, c. 240, § 1.)

§ 1305 Public employer rights.

A public employer is not required to engage in collective bargaining on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the functions and programs of the public employer, its standards of services, overall budget, utilization of technology, the organizational structure and staffing levels and the selection and direction of personnel.

(69 Del. Laws, c. 466, § 1.)

§ 1306 Public Employment Relations Board.

The Board, established by § 4006 of Title 14, known as the "Public Employment Relations Board," shall be empowered to administer this chapter under the rules and regulations which it shall adopt and publish.

(69 Del. Laws, c. 466, § 1.)

§ 1307 Unfair labor practices.

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

(2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.

(3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

(4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under this chapter.

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

(6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

(7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

(b) It is unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

(2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.

**Part I
General Provisions**

Chapter 16

POLICE OFFICERS' AND FIREFIGHTERS' EMPLOYMENT RELATIONS ACT

Subchapter I

General Provisions

§ 1601 Statement of policy.

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees, employed as police officers and firefighters, and to protect the public by assuring the orderly and uninterrupted operations and functions of public safety services. These policies are best effectuated by:

- (1) Granting to police officers and firefighters the right of organization and representation;
- (2) Obligating public employers and organizations of police officers and firefighters which have been certified as representing their employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations; and
- (3) Empowering the Public Employment Relations Board to assist in resolving disputes between police officers or firefighters and their public employers and to administer this chapter.

(65 Del. Laws, c. 477, § 1.)

§ 1602 Definitions.

(a) "Appropriate bargaining unit" or "bargaining unit" means a group of police officers or firefighters designated by the Public Employment Relations Board as appropriate for representation by an employee organization for purposes of collective bargaining.

(b) "Binding interest arbitration" means the procedure by which the Public Employment Relations Board shall make written findings of fact and a decision for final and binding resolution of an impasse arising out of collective bargaining.

(c) "Board" means the Public Employment Relations Board established by § 4006 of Title 14 and made applicable to this chapter by § 1306 of this title.

(d) "Certification" means official recognition by the Board, following a secret-ballot election, that an employee organization is the exclusive representative for all employees in an appropriate bargaining unit.

(e) "Collective bargaining" means the performance of the mutual obligation of a public employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

(f) "Decertification" means the withdrawal by the Board of an employee organization's official designation as exclusive representative following a decertification election which shows that the exclusive representative no longer has the support of a majority of the members in an appropriate bargaining unit.

(g) "Employee organization" means any organization which admits to membership police officers or firefighters employed by a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

(h) "Exclusive bargaining representative" or "exclusive representative" means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit.

(i) "Impasse" means the failure of a public employer and the exclusive bargaining representative to reach agreement in the course of collective bargaining.

(j) "Mediation" means an effort by an impartial third-party confidentially to assist in reconciling an impasse between the public employer and the exclusive bargaining representative regarding terms and conditions of employment.

(k) "Public employee" or "employee" means any police officer or firefighter employed by a public employer except those determined by the Board to be inappropriate for inclusion in the bargaining unit; provided, however, that for the purposes of this chapter, this term shall not include any state employee covered under the State Merit System.

(l) "Public employer" or "employer" means the State or political subdivisions of the State or any agency thereof, any county, or any agency thereof, or any municipal corporation or municipality, city or town located within the State or any agency thereof, which:

(1) Upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title;

(2) Hereafter elects to come within this chapter; or

(3) Employs 25 or more full-time employees. For the purposes of this paragraph, "employees" shall include each and every person employed by the public employer except:

Title 19 - Labor

- a. Any person elected by popular vote; and
- b. Any person appointed to serve on a board or commission.

(m) "Strike" means a public employee's failure, in concerted action with others, to report for duty, or the public employee's wilful absence from the public employee's position, or the public employee's stoppage or deliberate slowing down of work, or the public employee's withholding in whole or in part from the full, faithful and proper performance of the public employee's duties of employment, or the public employee's involvement in a concerted interruption of operations of a public employer for the purpose of inducing, influencing or coercing a change in the conditions, compensation rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to terms and conditions of employment.

(n) "Terms and conditions of employment" means matters concerning or related to wages, salaries, hours, grievance procedures and working conditions; provided, however, that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public employer.

(65 Del. Laws, c. 477, § 1; 70 Del. Laws, c. 163, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 466, § 1; 72 Del. Laws, c. 271, §§ 1, 8; 74 Del. Laws, c. 173, § 1.)

§ 1603 Employee rights.

Employees shall have the right to:

- (1) Organize, form, join or assist any employee organization, provided that membership in, or an obligation to pay any dues, fees, assessments or other charges to, an employee organization shall not be required as a condition of employment.
 - (2) Negotiate collectively or grieve through representatives of their own choosing.
 - (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.
 - (4) Be represented by their exclusive representative, if any, without discrimination.
- (65 Del. Laws, c. 477, § 1.)

§ 1604 Employee organization as exclusive representative.

(a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

(b) Nothing contained in this section shall prevent employees individually, or as a group, from presenting complaints to a public employer and from having such complaints adjusted without the intervention of the exclusive representative for the bargaining unit of which they are a part, as long as the representative is given an opportunity to be present at such adjustment and to make its view known, and as long as the adjustment is not inconsistent with the terms of an agreement between the public employer and the exclusive representative which is then in effect. The right of the exclusive representative shall not apply where the complaint involves matters of personal, embarrassing and confidential nature, and the complainant specifically requests, in writing, that the exclusive representative not be present.

(c) Any employee organization which has been certified as an exclusive representative shall have the right to have its dues deducted and collected by the employer from the salaries of those employees within the bargaining unit who authorize, in writing, the deduction of said dues. Such authorization is revocable at the employee's written request. Said deductions shall commence upon the exclusive representative's written request to the employer. Such right to deduction shall be in force for so long as the employee organization remains the exclusive bargaining representative for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties or special assessments levied on members by the exclusive representative.

(65 Del. Laws, c. 477, § 1.)

§ 1605 Employer rights.

A public employer is not required to engage in collective bargaining on matters of inherent managerial policy which include, but are not limited to, such areas of discretion or policy as the functions and programs of the public employer, its standards of services, overall budget, utilization of technology, the organizational structure and the staffing levels, selection and direction of personnel.

(65 Del. Laws, c. 477, § 1.)

§ 1606 Public Employment Relations Board.

The Board, established by § 4006 of Title 14, known as the "Public Employment Relations Board," shall be empowered to administer this chapter under rules and regulations which it shall adopt and publish.

(65 Del. Laws, c. 477, § 1.)

§ 1607 Unfair labor practices — Enumerated.

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

Hawaii

L 1984, c 90, §1 and am L 1984, c 254, §3; am L 1985, c 251, §3; gen ch 1985; am L 2000, c 253, § 93; am L 2001, c 90, § 8; am L 2002, c 232, §5; am L 2005, c 245, §3; ; am L 2007, c 294, §2; am L Sp 2008, c 5, §1; am L 2010, c 106, §2; am L 2011, c 43, §1]

§89-3 Rights of employees. Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4. [L 1970, c 171, pt of §2; am L 1981, c 180, §3; am L 2000, c 253, §94; am L 2005, c 245, §§4, 8; am L 2007, c 294, §2; am L Sp 2008, c 5, §1; am L 2010, c 106, §2]

§89-3.5 Religious exemption from support of employee organization. Notwithstanding any other provision of law to the contrary, any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to join or financially support any employee organization as a condition of employment; except that an employee may be required in a contract between an employee's employer and employee organization in lieu of periodic dues and initiation fees, to pay sums equal to the dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in the contract or if the contract fails to designate any funds, then to any fund chosen by the employee. If an employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance-arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using the procedure. [L 1982, c 102, §1; am L 1983, c 124, §3]

§89-4 Payroll deductions. (a) Upon receiving from an exclusive representative a written statement specifying the amount of regular dues required of its members in the appropriate bargaining unit, the employer shall deduct this amount from the payroll of every member employee in the appropriate bargaining unit and remit the amount to the exclusive representative. Additionally, the employer shall deduct an amount equivalent to the regular dues from the payroll of every nonmember employee in the appropriate bargaining unit, and shall remit the amount to the exclusive representative; provided that the deduction from the payroll of every nonmember employee shall be made only for an exclusive representative which provides for a procedure for determining the amount of a refund to any employee who demands the return of any part of the deduction which represents the employees' pro rata share of expenditures made by the exclusive representative for activities of a political and ideological nature unrelated to terms and conditions of employment. If a nonmember employee objects to the amount to be refunded, the nonmember employee may petition the board for review thereof within fifteen days after notice of the refund has been received. If an employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction from the payroll of members and nonmembers shall terminate.

(b) The employer shall, upon written authorization by an employee, executed at any time after the employee's joining an employee organization, deduct from the payroll of the employee the amount of membership dues, initiation fees, group insurance premiums, and other association benefits and shall remit the amount to the employee organization designated by the employee.

(c) The employer shall continue all payroll assignments authorized by an employee prior to July 1, 1970 and all assignments authorized under subsection (b) until notification is submitted by an employee to discontinue the employee's assignments. [L 1970, c 171, pt of §2; am L 1981, c 180, §1; am L 1982, c 100, §1; am imp L 1984, c 90, §1; gen ch 1985]

§89-5 Hawaii labor relations board.(a) There is created a Hawaii labor relations board to ensure that collective bargaining is conducted in accordance with this chapter and that the merit principle under section 76-1 is maintained.

(b) The board shall be composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairperson, shall be representative of the public. All members shall be appointed for terms of six years each in accordance with the following procedures:

(1) The representative of management shall be appointed b, who may first consider any names submitted by the counties; provided that each county may submit no more than one name;

(2) The representative of labor shall be appointed by the governor from a list of three nominees submitted by mutual agreement from a majority of the exclusive representatives; and

(3) The representative of the public shall be appointed by the governor.

(c) Each member shall hold office until the member's successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms.

(d) The members shall devote full time to their duties as members of the board. Effective July 1, 2005, the chairperson of the board shall be paid a salary set at eighty-seven per cent of the salary of the director of labor and industrial relations, and the salary of each of the other members shall be ninety-five per cent of the chairperson's salary. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during the member's term.

(e) Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board in accordance with the procedures established in subsection (b) during the temporary absence from the State, temporary inability to act due to recusal, or illness of any regular member. An acting member, during the acting member's term of service, shall have the same powers and duties as the regular member; provided that subsection (d) shall not apply to an acting member and an acting member appointed due to a regular member's recusal shall be appointed for the case in which the recusal occurred, and the acting member's appointment shall terminate when the final decision is filed or the case is withdrawn.

(f) The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, attorneys, paralegals, mediators, arbitrators, and hearing officers, and other personnel as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. Section 28-8.3 notwithstanding, any attorney employed by the board as a full-time, part-time, or contract staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not

§89-8 Recognition and representation; employee participation. (a) The employee organization which has been certified by the board as representing the majority of employees in an appropriate bargaining unit shall be the exclusive representative of all employees in the unit. As exclusive representative, it shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Any other provision herein to the contrary notwithstanding, whenever two or more employee organizations which have been duly certified by the board as the exclusive representatives of employees in bargaining units merge, combine, or amalgamate or enter into an agreement for common administration or operation of their affairs, all rights and duties of such employee organizations as exclusive representatives of employees in such units shall inure to and shall be discharged by the organization resulting from such merger, combination, amalgamation or agreement, either alone or with such employee organizations. Election by the employees in the unit involved, and certification by the board of such resulting employee organization shall not be required.

(b) An individual employee may present a grievance at any time to the employee's employer and have the grievance heard without intervention of an employee organization; provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

(c) Employee participation in the collective bargaining process conducted by the exclusive representative of the appropriate bargaining unit shall be permitted during regular working hours without loss of regular salary or wages. The number of participants from each bargaining unit with over 2,500 members shall be limited to one member for each five hundred members of the bargaining unit. For bargaining units with less than 2,500 members, there shall be at least five participants, one of whom shall reside in each county; provided that there need not be a participant residing in each county for the bargaining unit established by section 89-6(a)(8). The bargaining unit shall select the participants from representative departments, divisions or sections to minimize interference with the normal operations and service of the departments, divisions or sections. [L 1970, c 171, pt of §2; am L 1971, c 212, §2; am L 1977, c 191, §3; gen ch 1985]

§89-8.5 Negotiating authority; Hawaii health systems corporation. Notwithstanding any law to the contrary, including section 89-6(d), the Hawaii health systems corporation or any of the regional boards, as a sole employer negotiator, may negotiate with the exclusive representative of any appropriate bargaining unit and execute memorandums of understanding for employees under its control to alter any existing or new collective bargaining agreement on any item or items subject to section 89-9: provided that an alteration that intrudes beyond the jurisdiction of the Hawaii health systems corporation shall be effective only if the employer of the governmental jurisdiction intruded upon consents to the alteration in writing. [L 2009, c 182, §5; L 2015, c 103, §3]

§89-9 Scope of negotiations; consultation. (a) The employer and the exclusive representative shall meet at reasonable times, including meetings sufficiently in advance of the February 1 impasse date under section 89-11, and shall negotiate in good faith with respect to wages, hours, the amounts of contributions by the State and respective counties to the Hawaii employer-union health benefits trust fund to the extent allowed in subsection (e), and other terms and conditions of employment which are subject to collective bargaining and which are to be embodied in a written agreement as specified in section 89-10, but such obligation does not compel either party to agree to a proposal or make a concession.

Illinois

Bill Status of HB4468 100th General Assembly**Short Description:** COLLECTIVE BARGAINING SUBJECTS**House Sponsors**Rep. Joe Sosnowski and Allen Skillicorn**Last Action**

Date	Chamber	Action
1/31/2018	House	Referred to <u>Rules Committee</u>

Statutes Amended In Order of Appearance

<u>5 ILCS 315/2</u>	from Ch. 48, par. 1602
<u>5 ILCS 315/3</u>	from Ch. 48, par. 1603
<u>5 ILCS 315/4</u>	from Ch. 48, par. 1604
<u>5 ILCS 315/6</u>	from Ch. 48, par. 1606
<u>5 ILCS 315/7</u>	from Ch. 48, par. 1607
<u>5 ILCS 315/9</u>	from Ch. 48, par. 1609
<u>5 ILCS 315/15</u>	from Ch. 48, par. 1615
<u>5 ILCS 315/21.5</u>	
<u>105 ILCS 5/34-3.5</u>	
<u>115 ILCS 5/1</u>	from Ch. 48, par. 1701
<u>115 ILCS 5/2</u>	from Ch. 48, par. 1702
<u>115 ILCS 5/3</u>	from Ch. 48, par. 1703
<u>115 ILCS 5/4</u>	from Ch. 48, par. 1704
<u>115 ILCS 5/7</u>	from Ch. 48, par. 1707
<u>115 ILCS 5/10</u>	from Ch. 48, par. 1710
<u>115 ILCS 5/12</u>	from Ch. 48, par. 1712
<u>115 ILCS 5/4.5 rep.</u>	

Synopsis As Introduced

Amends the Illinois Public Labor Relations Act and the Illinois Educational Labor Relations Act to limit the required subjects of collective bargaining under those respective Acts to employee wages. Exempts specified security employees, peace officer units, and units of fire fighters or paramedics from provisions limiting the subjects of collective bargaining to employee wages. Defines "wages". Makes conforming changes. Effective immediately.

Actions

Date	Chamber	Action
1/31/2018	House	Filed with the Clerk by <u>Rep. Joe Sosnowski</u>
1/31/2018	House	First Reading
1/31/2018	House	Referred to <u>Rules Committee</u>
3/8/2018	House	Added Co-Sponsor <u>Rep. Allen Skillicorn</u>

Maine

Maine Revised Statutes

Title 26: LABOR AND INDUSTRY

Chapter 9-A: MUNICIPAL PUBLIC EMPLOYEES LABOR RELATIONS LAW

§964. Prohibited acts of public employers, public employees and public employee organizations

1. Public employer prohibitions. Public employers, their representatives and their agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963; [1969, c. 424, §1 (NEW).]

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; [1969, c. 424, §1 (NEW).]

C. Dominating or interfering with the formation, existence or administration of any employee organization; [1969, c. 424, §1 (NEW).]

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; [1969, c. 424, §1 (NEW).]

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 965; [1969, c. 424, §1 (NEW).]

F. Blacklisting of any employee organization or its members for the purpose of denying them employment; [2007, c. 415, §3 (AMD).]

G. Requiring an employee to join a union, employee association or bargaining agent as a member; and [2007, c. 415, §4 (NEW).]

H. Terminating or disciplining an employee for not paying union dues or fees of any type. [2007, c. 415, §5 (NEW).]

[2007, c. 415, §§3-5 (AMD) .]

2. Public employee prohibitions. Public employees, public employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963 or a public employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; [1969, c. 424, §1 (NEW).]

B. Refusing to bargain collectively with a public employer as required by section 965; [1969, c. 424, §1 (NEW).]

C. Engaging in

- (1) A work stoppage;
- (2) A slowdown;
- (3) A strike; or
- (4) The blacklisting of any public employer for the purpose of preventing it from filling employee vacancies. [1969, c. 424, §1 (NEW) .]

[1969, c. 424, §1 (NEW) .]

3. Violations. Violations of this section shall be processed by the board in the manner provided in section 968, subsection 5.

[1971, c. 609, §2 (RPR) .]

SECTION HISTORY

1969, c. 424, §1 (NEW) . 1971, c. 609, §2 (AMD) . 2007, c. 415, §§3-5 (AMD) .

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

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Maine Revised Statutes

Title 26: LABOR AND INDUSTRY

Chapter 9-B: STATE EMPLOYEES LABOR RELATIONS ACT

§979-B. Right of state employees or legislative employees to join or refrain from joining labor organizations; prohibition

A person may not directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against a state or legislative employee or a group of employees in the free exercise of their rights, given by this section, to voluntarily: [2007, c. 415, §6 (RPR).]

1. Join a union. Join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining or in the free exercise of any other right under this chapter; or

[2007, c. 415, §6 (NEW) .]

2. Not join a union. Refrain from joining or participating in the activities of organizations for the purposes of representation and collective bargaining, except that an employee may be required to pay to the organization that is the bargaining agent for the employee a service fee that represents the employee's pro rata share of those expenditures that are germane to the organization's representational activities.

[2007, c. 415, §6 (NEW) .]

SECTION HISTORY

1973, c. 774, (NEW). 1997, c. 741, §4 (AMD). 1997, c. 741, §12 (AFF). 2007, c. 415, §6 (RPR) .

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Maryland

Statute Text

Article - State Personnel and Pensions

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§3-301.

(a) Employees subject to this title have the right to:

(1) take part or refrain from taking part in forming, joining, supporting, or participating in any employee organization or its lawful activities;

(2) be fairly represented by their exclusive representative, if any, in collective bargaining;
and

(3) except as provided in §§ 3-303 and 3-305 of this subtitle, engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) An employee who is a member of a bargaining unit with an exclusive representative may, without the intervention of an employee organization, discuss any matter with the employer.

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Statute Text

Article - State Personnel and Pensions

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§3-502.

(a) Collective bargaining shall include all matters relating to:

- (1) wages, hours, and other terms and conditions of employment; and
- (2) the time and manner of access to a new employee program as required under § 3-307 of this title.

(b) (1) Collective bargaining may include negotiations relating to the right of an employee organization to receive service fees from nonmembers.

(2) An employee whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization is:

- (i) not required to pay a service fee; and
- (ii) required to pay an amount of money as determined in collective bargaining negotiations, not to exceed any service fee negotiated under paragraph (1) of this subsection, to any charitable organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code and to furnish written proof of the payment to:

1. A. the Department; or
B. in the case of an employee of an institution of higher education specified in § 3-102(a)(1)(v) of this title, the President of the institution or the President's designee; and
2. the exclusive representative.

(c) Notwithstanding subsection (a) of this section, the representatives of the State, a system institution, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College:

(1) shall not be required to negotiate over any matter that is inconsistent with applicable law; and

(2) may negotiate and reach agreement with regard to any such matter only if it is understood that the agreement with respect to such matter cannot become effective unless the applicable law is amended by the General Assembly.

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Massachusetts

Part I

ADMINISTRATION OF THE GOVERNMENT

Title XXI

LABOR AND INDUSTRIES

Chapter

LABOR RELATIONS

150A**Section 3**

RIGHTS OF EMPLOYEES

Section 3. Employees, or a single employee in a one-man unit, shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. An employee shall also have the right to refrain from any such activities, except to the extent of making payment of service fees to an exclusive representative.

Minnesota

2017 Minnesota Statutes

[Authenticate](#)

179A.06 RIGHTS AND OBLIGATIONS OF EMPLOYEES.

Subdivision 1. **Expression of views.** Sections 179A.01 to 179A.25 do not affect the right of any public employee or the employee's representative to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as this is not designed to and does not interfere with the full faithful and proper performance of the duties of employment or circumvent the rights of the exclusive representative. Sections 179A.01 to 179A.25 do not require any public employee to perform labor or services against the employee's will.

If no exclusive representative has been certified, any public employee individually, or group of employees through their representative, has the right to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, by meeting with their public employer or the employer's representative, so long as this is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment.

Subd. 2. **Right to organize.** Public employees have the right to form and join labor or employee organizations, and have the right not to form and join such organizations. Public employees in an appropriate unit have the right by secret ballot to designate an exclusive representative to negotiate grievance procedures and the terms and conditions of employment with their employer. Confidential employees of the state, confidential court employees, and confidential University of Minnesota employees are excluded from bargaining. Supervisory and managerial court employees are excluded from bargaining. Supervisory, managerial, and confidential employees of Hennepin Healthcare System, Inc., are excluded from bargaining. Other confidential employees, supervisory employees, principals, and assistant principals may form their own organizations. An employer shall extend exclusive recognition to a representative of or an organization of supervisory or confidential employees, or principals and assistant principals, for the purpose of negotiating terms or conditions of employment, in accordance with sections 179A.01 to 179A.25, applicable to essential employees.

Supervisory or confidential employee organizations shall not participate in any capacity in any negotiations which involve units of employees other than supervisory or confidential employees. Except for organizations which represent supervisors who are: (1) firefighters, emergency medical service employees certified under section 144E.28, 911 system public safety dispatchers, peace officers subject to licensure under sections 626.84 to 626.863, guards at correctional facilities, or employees at hospitals other than state hospitals; and (2) not state or University of Minnesota employees, a supervisory or confidential employee organization which is affiliated with another employee organization which is the exclusive representative of nonsupervisory or nonconfidential employees of the same public employer shall not be certified, or act as, an exclusive representative for the supervisory or confidential employees. For the purpose of this subdivision, affiliation means either direct or indirect and includes affiliation through a federation or joint body of employee organizations.

Subd. 3. **Fair share fee.** An exclusive representative may require employees who are not members of the exclusive representative to contribute a fair share fee for services rendered by the exclusive representative. The fair share fee must be equal to the regular membership dues of the exclusive representative, less the cost of benefits financed through the dues and available only to members of the exclusive representative. In no event may the fair share fee exceed 85 percent of the regular membership dues. The exclusive representative shall provide advance written notice of the amount of the fair share fee to the employer and to unit employees who will be assessed the fee. The employer shall provide the exclusive representative with a list of all unit employees.

A challenge by an employee or by a person aggrieved by the fee must be filed in writing with the commissioner, the public employer, and the exclusive representative within 30 days after receipt of the written notice. All challenges must specify those portions of the fee challenged and the reasons for the challenge. The burden of proof

relating to the amount of the fair share fee is on the exclusive representative. The commissioner shall hear and decide all issues in these challenges.

The employer shall deduct the fee from the earnings of the employee and transmit the fee to the exclusive representative 30 days after the written notice was provided. If a challenge is filed, the deductions for a fair share fee must be held in escrow by the employer pending a decision by the commissioner.

Subd. 4. **Meet and confer.** Professional employees have the right to meet and confer under section 179A.08 with public employers regarding policies and matters other than terms and conditions of employment.

Subd. 5. **Meet and negotiate.** Public employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the exclusive representative to agree to a proposal or require the making of a concession.

Subd. 6. **Dues checkoff.** Public employees have the right to request and be allowed dues checkoff for the exclusive representative. In the absence of an exclusive representative, public employees have the right to request and be allowed dues checkoff for the organization of their choice.

Subd. 7. **Concerted activity.** Public employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

[See Note.]

History: 1984 c 462 s 7; 1987 c 186 s 15; 1989 c 255 s 4; 1997 c 7 art 1 s 83; 1999 c 216 art 7 s 7; 2000 c 387 s 1; 2005 c 125 art 1 s 29; art 2 s 4, 10; 1Sp2005 c 7 s 34; 2014 c 211 s 8, 13; 1Sp2015 c 1 art 7 s 1

NOTE: Subdivision 7, as added by Laws 2014, chapter 211, section 8, is effective July 1, 2020. Until July 1, 2020, any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in Minnesota Statutes, section 179A.13, may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred. Laws 2014, chapter 211, section 13, as amended by Laws 2015, First Special Session chapter 1, article 7, section 1; Laws 2016, chapter 189, article 7, section 42; Laws 2017, chapter 94, article 12, section 1.

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Montana

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Montana Code Annotated 2017

TITLE 39. LABOR

CHAPTER 31. COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 2. Public Employee Self-Organization and Certification of Bargaining Representative

Designated Labor Organizations To Represent Employees Without Discrimination

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

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Montana Code Annotated 2017

TITLE 39. LABOR

CHAPTER 31. COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 4. Unfair Labor Practices

Unfair Labor Practices Of Public Employer


39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

- (1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in **39-31-201**;
- (2) dominate, interfere, or assist in the formation or administration of any labor organization. However, subject to rules adopted by the board under **39-31-104**, an employer is not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.
- (3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization. However, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member must have an amount equal to the union initiation fee and monthly dues deducted from the employee's wages in the same manner as checkoff of union dues.
- (4) discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or
- (5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979; amd. Sec. 1514, Ch. 56, L. 2009.

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Laws > Chapter 273-A:5

**CHAPTER 273-A
PUBLIC EMPLOYEE LABOR RELATIONS**

Section 273-A:5

273-A:5 Unfair Labor Practices Prohibited.

I. It shall be a prohibited practice for any public employer:

- (a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;
- (b) To dominate or to interfere in the formation or administration of any employee organization;
- (c) To discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization;
- (d) To discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition, or given information or testimony under this chapter;
- (e) To refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations;
- (f) To invoke a lockout;
- (g) To fail to comply with this chapter or any rule adopted under this chapter;
- (h) To breach a collective bargaining agreement;
- (i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.

II. It shall be a prohibited practice for the exclusive representative of any public employee:

- (a) To restrain, coerce or otherwise interfere with public employees in the exercise of their rights under this chapter;
- (b) To restrain, coerce or otherwise interfere with public employers in their selection of agents to represent them in collective bargaining negotiations or the settlement of grievances;

- (c) To cause or attempt to cause a public employer to discriminate against an employee in violation of RSA 273-A:5, I(c), or to discriminate against any public employee whose membership in an employee organization has been denied or terminated for reasons other than failure to pay membership dues;
- (d) To refuse to negotiate in good faith with the public employer;
- (e) To engage in a strike or other form of job action;
- (f) To breach a collective bargaining agreement.
- (g) To fail to comply with this chapter or any rule adopted hereunder.

Source. 1975, 490:2. 1979, 374:4, eff. Aug. 22, 1979

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Laws > Chapter 273-A:11

**CHAPTER 273-A
PUBLIC EMPLOYEE LABOR RELATIONS**

Section 273-A:11

273-A:11 Rights Accompanying Certification.

I. Public employers shall extend the following rights to the exclusive representative of a bargaining unit certified under RSA 273-A:8:

(a) The right to represent employees in collective bargaining negotiations and in the settlement of grievances. An individual employee may present an oral grievance to his employer without the intervention of the exclusive representative. Until the grievance is reduced to writing, the exclusive representative shall be excluded from a hearing if the employee so requests; but any resolution of the grievance shall not be inconsistent with the terms of an existing agreement between the parties.

(b) The right to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement. Notwithstanding the foregoing, an election may be held not more than 180 nor less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire.

II. A reasonable number of employees who act as representatives of the bargaining unit shall be given a reasonable opportunity to meet with the employer or his representatives during working hours without loss of compensation or benefits.

Source. 1975, 490:2, eff. Aug. 23, 1975.

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New Jersey

P.L. 2018, CHAPTER 15, *approved May 18, 2018*
Assembly, No. 3686 (*First Reprint*)

1 AN ACT concerning public employment relations, supplementing
2 P.L.1941, c.100 (C.34:13A-1 et seq.), and amending P.L.1967,
3 c.310.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. (New section) This act shall be known and may be cited as
9 the "Workplace Democracy Enhancement Act."
10

11 2. (New section) The Legislature finds and declares that
12 collective negotiations promote labor stability in the public sector
13 and enhance the delivery and avoid the disruption of public
14 services. The Legislature further declares that it is in the public
15 interest to ensure that any employee organization that has been
16 designated as the exclusive representatives of employees in a
17 collective negotiations unit is able to effectively carry out its
18 statutory duties by having access to and being able to communicate
19 with the employees it represents.
20

21 3. (New section) a. Public employers shall provide to exclusive
22 representative employee organizations access to members of the
23 negotiations units.

24 b. Access includes, but is not limited to, the following:

25 (1) the right to meet with individual employees on the premises of
26 the public employer during the work day to investigate and discuss
27 grievances, workplace-related complaints, and other workplace issues;

28 (2) the right to conduct worksite meetings during lunch and other
29 non-work breaks, and before and after the workday, on the employer's
30 premises to discuss workplace issues, collective negotiations, the
31 administration of collective negotiations agreements, other matters
32 related to the duties of an exclusive representative employee
33 organization, and internal union matters involving the governance or
34 business of the exclusive representative employee organization; and

35 (3) the right to meet with newly hired employees, without charge
36 to the pay or leave time of the employees, for a minimum of 30 ¹and a
37 maximum of 120¹ minutes, within 30 calendar days from the date of
38 hire, during new employee orientations, or if the employer does not
39 conduct new employee orientations, at individual or group meetings.

EXPLANATION -- Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted March 22, 2018.

1 c. Within 10 calendar days from the date of hire of negotiations
2 unit employees, public employers shall provide the following contact
3 information to an exclusive representative employee organization in an
4 Excel file format or other format agreed to by the exclusive
5 representative employee organization: name, job title, worksite
6 location, home address, work telephone numbers, and any home and
7 personal cellular telephone numbers on file with the public employer,
8 date of hire, and work email address and any personal email address
9 on file with the public employer. Every 120 calendar days beginning
10 on January 1 following the effective date of this act, public employers
11 shall provide exclusive representative employee organizations, in an
12 Excel file or similar format agreed to by the employee organization,
13 the following information for all negotiations unit employees: name,
14 job title, worksite location, home address, work, home and personal
15 cellular telephone numbers, date of hire, and work email address and
16 personal email address on file with the public employer.

17 d. The home addresses, phone numbers, email addresses, dates of
18 birth, and negotiation units and groupings of employees, and the
19 emails or other communications between employee organizations and
20 their members, 'prospective members, and non-members.' are not
21 government records and are exempt from any disclosure requirements
22 of P.L.1963, c.73 (C.47:1A-1 et seq.).

23 e. Exclusive representative employee organizations shall have the
24 right to use the email systems of public employers to communicate
25 with negotiations unit members regarding collective negotiations, the
26 administration of collective negotiations agreements, the investigation
27 of grievances, other workplace-related complaints and issues, and
28 internal union matters involving the governance or business of the
29 union.

30 f. Exclusive representative employee organizations shall have the
31 right to use government buildings and other facilities that are owned or
32 leased by government entities to conduct meetings with their unit
33 members regarding collective negotiations, the administration of
34 collective negotiations agreements, the investigation of grievances,
35 other workplace-related complaints and issues, and internal union
36 matters involving the governance or business of the union, provided
37 such use does not interfere with governmental operations. Meetings
38 conducted in government buildings pursuant to this section shall not be
39 for the purpose of supporting or opposing any candidate for partisan
40 political office, or for the purpose of distributing literature or
41 information regarding partisan elections. An exclusive representative
42 employee organization conducting a meeting in a government building
43 or other government facility pursuant to this section may be charged
44 for maintenance, security and other costs related to the use of the
45 government building or facility that would not otherwise be incurred
46 by the government entity.

47 g. Upon the request of an exclusive representative employee
48 organization, a public employer shall negotiate in good faith over

1 contractual provisions to memorialize the parties' agreement to
2 implement the provisions of subsections a. through f. of this section.
3 Negotiations shall commence within 10 calendar days from the date of
4 a request by the employee organization, even if a collective
5 negotiations agreement is in effect on the effective date of this act.
6 Agreements between a public employer and an exclusive
7 representative employee organization implementing subsections a.
8 through f. of this section shall be incorporated into the parties'
9 collective negotiations agreement and shall be enforceable through the
10 parties' grievance procedure, which shall include binding arbitration.
11 The requirements set forth in subsections a. through f. of this section
12 establish the minimum requirements for access to and communication
13 with negotiations unit employees by an exclusive representative
14 employee organization.

15 h. If the parties are unable to reach agreement within 30 calendar
16 days from the commencement of negotiations regarding access to and
17 communications with negotiations unit members, the exclusive
18 employee organization or the public employer may file a petition with
19 the Public Employment Relations Commission to resolve the
20 negotiations dispute. Upon receipt of a petition, the commission shall
21 appoint an arbitrator, who shall issue a binding award resolving the
22 parties' negotiations disputes consistent with subsections a. through f.
23 of this section. The commission shall establish a panel of arbitrators to
24 resolve negotiations pursuant to this section and shall promulgate rules
25 to implement this section.

26 i. For the purposes of this section, "exclusive representative
27 employee organization" means an employee organization which has
28 been designated as the exclusive representatives of employees in a
29 collective negotiations unit.

30
31 4. (New section) a. A public employer shall not encourage
32 negotiations unit members to resign or relinquish membership in an
33 exclusive representative employee organization and shall not
34 encourage negotiations unit members to revoke authorization of the
35 deduction of fees to an exclusive representative employee
36 organization.

37 b. A public employer shall not encourage or discourage an
38 employee from joining, forming or assisting an employee
39 organization.

40 c. A public employer that violates any provision of subsection
41 a. or b. of this section shall be regarded as having engaged in an
42 unfair practice in violation of subsection a. of section 1 of P.L.1974,
43 c.123 (C.34:13A-5.4), and, upon a finding that the violation has
44 occurred, the Public Employment Relations Commission, in
45 addition to implementing any other remedies authorized by that
46 section, shall order the public employer to make whole the
47 exclusive representative employee organization for any losses

1 suffered by the organization as a result of the public employer's
2 unlawful conduct and any other remedial relief deemed appropriate.

3
4 5. (New section) a. All regular full-time and part-time
5 employees of the public employer who perform negotiations unit
6 work shall be included in the negotiations unit represented by the
7 exclusive representative employee organization.

8 b. Negotiations unit work means work that is performed by any
9 employees who are included in a negotiations unit represented by an
10 exclusive representative employee organization without regard to
11 job title, job classification or number of hours worked, except that
12 employees who are confidential employees or managerial
13 executives, as those terms are defined by section 1 of P.L.1941,
14 c.100 (C.34:13A-3), or elected officials, members of boards and
15 commissions, or casual employees, may be excluded from the
16 negotiations unit. Casual employees are employees who work an
17 average of fewer than four hours per week over a period of 90
18 calendar days.

19 c. Employees who are performing negotiations unit work and
20 who are not included in a negotiations unit because they did not
21 meet the threshold of hours or percent of time worked as set forth in
22 a certification of representative, recognition clause or other
23 provision in a collective negotiations agreement, shall be included
24 in the negotiations unit by operation of this act, within 90 calendar
25 days from the effective date of this act.

26 d. The Public Employment Relations Commission shall
27 promulgate rules to implement this section, including rules to
28 resolve disputes over the inclusion of employees performing
29 negotiations unit work in the appropriate negotiations unit. The
30 rules promulgated by the commission shall provide for the
31 resolution of disputes that arise under this section, within 60
32 calendar days from the submission of the dispute to the commission
33 by either the exclusive representative employee organization or the
34 public employer.

35
36 6. Section 1 of P.L.1967, c.310 (C.52:14-15.9e) is amended to
37 read as follows:

38 1. Whenever any person holding employment, whose
39 compensation is paid by this State or by any county, municipality,
40 board of education or authority in this State, or by any board, body,
41 agency or commission thereof shall indicate in writing, including by
42 electronic communications, and which writing or communication
43 may be evidenced by the electronic signature of the employee, as
44 the term electronic signature is defined in section 2 of P.L.2001,
45 c.116, (C.12A:12-2), to the proper disbursing officer his desire to
46 have any deductions made from his compensation, for the purpose
47 of paying the employee's dues to a bona fide employee
48 organization, designated by the employee in such request, and of

1 which said employee is a member, such disbursing officer shall
2 make such deduction from the compensation of such person and
3 such disbursing officer shall transmit the sum so deducted to the
4 employee organization designated by the employee in such request.

5 [Any such written authorization may be withdrawn by such
6 person holding employment at any time by the filing of notice of
7 such withdrawal with the above-mentioned disbursing officer. The
8 filing of notice of withdrawal shall be effective to halt deductions as
9 of the January 1 or July 1 next succeeding the date on which notice
10 of withdrawal is filed.]

11 Employees who have authorized the payroll deduction of fees to
12 employee organizations may revoke such authorization by
13 providing written notice to their public employer during the 10 days
14 following each anniversary date of their employment. Within five
15 days of receipt of notice from an employee of revocation of
16 authorization for the payroll deduction of fees, the public employer
17 shall provide notice to the employee organization of an employee's
18 revocation of such authorization. An employee's notice of
19 revocation of authorization for the payroll deduction of employee
20 organization fees shall be effective on the 30th day after the
21 anniversary date of employment.

22 Nothing herein shall preclude a public employer and a duly
23 certified majority representative from entering into a collectively
24 negotiated written agreement which provides that employees
25 included in the negotiating unit may only request deduction for the
26 payment of dues to the duly certified majority representative. Such
27 collectively negotiated agreement may include a provision that
28 existing written authorizations for payment of dues to an employee
29 organization other than the duly certified majority representative be
30 terminated. Such collectively negotiated agreement may also
31 include a provision specifying the effective date of a termination in
32 deductions as of the July 1 next succeeding the date on which notice
33 of withdrawal is filed by an employee with the public employer's
34 disbursing officer.

35 This authorization for negotiation of exclusive dues deduction
36 provisions shall not apply to any negotiating unit which includes
37 employees of any local school district or county college.

38 As used in this section, dues shall mean all moneys required to
39 be paid by the employee as a condition of membership in an
40 employee organization and any voluntary employee contribution to
41 a committee or fund established by such organization, including but
42 not limited to welfare funds, political action committees, charity
43 funds, legal defense funds, educational funds, and funds for
44 donations to schools, colleges, and universities.

45 (cf: P.L.1981, c.345, s.1)



46
47 7. This act shall take effect immediately.

1 _____
2
3 “Workplace Democracy Enhancement Act.”

New Mexico

New Mexico Compilation Commission

TOC

  (2) Statutes, Rules, and Const.

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10-7E-15 . Exclusive representation.

A. A labor organization that has been certified by the board or local board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative.

History: Laws 2003, ch. 4, § 15 and by Laws 2003, ch. 5, § 15.

New York

1. Every government (other than the state or a state public authority), acting through its legislative body, is hereby empowered to establish procedures, not inconsistent with the provisions of section two hundred seven of this article and after consultation with interested employee organizations and administrators of public services, to resolve disputes concerning the representation status of employee organizations of employees of such government.

2. In the absence of such procedures, such disputes shall be submitted to the board in accordance with section two hundred five of this article.

§207 Determination of Representation Status

For purposes of resolving disputes concerning representation status, pursuant to section two hundred five or two hundred six of this article, the board or government, as the case may be, shall

1. define the appropriate employer-employee negotiating unit taking into account the following standards:

(a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit;

(b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and

(c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public.

2. ascertain the public employees' choice of employee organization as their representative (in cases where the parties to a dispute have not agreed on the means to ascertain the choice, if any, of the employees in the unit) on the basis of dues deduction authorization and other evidences, or, if necessary, by conducting an election.

3. certify or recognize an employee organization upon (a) the determination that such organization represents that group of public employees it claims to represent, and (b) the affirmation by such organization that it does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike.

§208 Rights Accompanying Certification or Recognition

[Amended effective April 12, 2018; underlined material is new]



1. A public employer shall extend to an employee organization certified or recognized pursuant to this article the following rights:

(a) to represent the employees in negotiations notwithstanding the existence of an agreement with an employee organization that is no longer certified or recognized, and in the settlement of grievances; and

(b) to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees. A public employer shall commence making such deductions as soon as practicable, but in no case later than thirty days after receiving proof of a signed dues deduction authorization card; and such dues shall be transmitted to the certified or recognized employee organization within thirty days of the deduction. A public employer shall accept a signed authorization to deduct from the salary of a public employee an amount for the payment of his or her dues in any format permitted by article three of the state technology law. The right to such membership dues deduction shall remain in full force and effect until:

(i) an individual employee revokes membership in the employee organization in writing in accordance with the terms of the signed authorization; or

(ii) the individual employee is no longer employed by the public employer, provided that if such employee is, within a period of one year, employed by the same public employer in a position represented by the same employee organization, the right to such dues deduction shall be automatically reinstated.

(c) Should the individual employee who has signed a dues deduction authorization card either be removed from a public employer's payroll or otherwise placed on any type of involuntary or voluntary leave of absence, whether paid or unpaid, such public employee's membership in an employee organization shall be continued upon that public employee's return to the payroll or restoration to active duty from such a leave of absence.

2. An employee organization certified or recognized pursuant to this article shall be entitled to unchallenged representation status until seven months prior to the expiration of a written agreement between the public employer and said employee organization determining terms and conditions of employment. For the purposes of this subdivision, (a) any such agreement for a term covering other than the fiscal year of the public employer shall be deemed to expire with the fiscal year ending immediately prior to the termination date of such agreement, (b) any such agreement having a term in excess of three years shall be treated as an agreement for a term of three years, provided, however, any such agreement between the state and an employee organization representing employees in the executive or judicial branches which commences in the calendar year two thousand eleven having a term in excess of three years shall be treated as an agreement for a term certain specified in such agreement but in no event for a term greater than four years, and (c) extensions of any such agreement shall not extend the period of unchallenged representation status.

(a) Notwithstanding provisions of and restrictions of sections two hundred two and two hundred nine-a of this article, and section two hundred one of the state finance law, every employee organization that has been recognized or certified as the exclusive representative of employees of the state within a negotiating unit of classified civil service employees, employees within a negotiating unit of civilian state employees of the

division of military and naval affairs or employees in a collective negotiating unit established pursuant to this article for the professional services in the state university, for the members of the state police or for the members of the capitol buildings police force of the office of general services shall be entitled to have deducted from the wage or salary of the employees in such negotiating unit who are not members of said employee organization the amount equivalent to the dues levied by such employee organization, and the state comptroller shall make such deductions and transmit the sum so deducted to such employee organization. Provided, however, that the foregoing provisions of this subdivision shall only be applicable in the case of an employee organization which has established and maintained a procedure providing for the refund to any employee demanding the return any part [sic] of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment. Nothing herein shall be deemed to require an employee to become a member of such employee organization.

(b) Notwithstanding provisions of and restrictions of sections two hundred two and two hundred nine-a of this article and section ninety-three-b of the general municipal law, every employee organization that has been recognized or certified as the exclusive representative of employees within a negotiating unit of other than state employees shall be entitled to have deducted from the wage or salary of employees of such negotiating unit who are not members of said employee organization the amount equivalent to the dues levied by such employee organization and the fiscal or disbursing officer of the local government or authority involved shall make such deductions and transmit the sum so deducted to such employee organization. Provided, however, that the foregoing provisions of this subdivision shall only be applicable in the case of an employee organization which has established and maintained a procedure providing for the refund to any employee demanding the return of any part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment. Nothing herein shall be deemed to require an employee to become a member of such employee organization.

4.(a) Within thirty days of a public employee first being employed or reemployed by a public employer, or within thirty days of being promoted or transferred to a new bargaining unit, the public employer shall notify the employee organization, if any, that represents that bargaining unit of the employee's name, address, job title, employing agency, department or other operating unit, and work location; and

(b) Within thirty days of providing the notice in paragraph a of this subdivision, a public employer shall allow a duly appointed representative of the employee organization that represents that bargaining unit to meet with such employee for a reasonable amount of time during his or her work time without charge to leave credits, unless otherwise specified within an agreement bargained collectively under article fourteen of the civil service law, provided however that arrangements for such meeting must be scheduled in consultation with a designated representative of the public employer.

(c) If any clause, sentence, paragraph, or subdivision of this section shall be adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or subdivision of this section directly involved in the controversy in which such judgment shall have been

rendered.

(b) If any clause, sentence, paragraph, or part of a signed authorization shall be adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such determination shall not affect, impair or invalidate the remainder of such signed authorization but shall be confined in its operation to the clause, sentence, paragraph, or part of the signed authorization directly involved in the controversy in which such judgment shall have been rendered.

§209 Resolution of Disputes in the Course of Collective Negotiations

1. For purposes of this section, an impasse may be deemed to exist if the parties fail to achieve agreement at least one hundred twenty days prior to the end of the fiscal year of the public employer.

2. Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures, public employers and employee organizations may request the board to render assistance as provided in this section, or the board may render such assistance on its own motion, as provided in subdivision three of this section, or, in regard to officers or members of any organized fire department, or any unit of the public employer which previously was a part of an organized fire department whose primary mission includes the prevention and control of aircraft fires, police force or police department of any county, city, town, village or fire or police district, or detective-investigators or rackets investigators employed in the office of a district attorney of a county, or in regard to any organized unit of troopers, commissioned or noncommissioned officers of the division of state police, or in regard to investigators, senior investigators and investigator specialists of the division of state police, or in regard to members of collective negotiating units designated as security services and security supervisors who are police officers, who are forest ranger captains or who are employed by the state department of corrections and community supervision and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, or in regard to members of the collective negotiating unit designated as the agency police services unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law or who are forest rangers, or in regard to organized units of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service as certified by the county sheriff and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council or Suffolk County correction officers or Suffolk county park police as provided in subdivision four of this section.

On request of either party or upon its own motion, as provided in subdivision two of this section, and in the event the board determines that an impasse exists in collective negotiations between such employee organization and a public employer as to the conditions of employment of public employees, the board shall render assistance as follows:

(a) to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator~~or~~ mediators representative of the public from a list of qualified persons maintained by the board;

(b) if the impasse continues, the board shall appoint a fact-finding board of not more than three members, each representative of the public, from a list of qualified persons maintained by the board, which fact-finding board shall have, in addition to the powers delegated to it by the board, the power to make public recommendations for the resolution of the dispute;

(c) if the dispute is not resolved at least eighty days prior to the end of the fiscal year of the public employer or by such other date determined by the board to be appropriate, the fact-finding board, acting by a majority of its members, (i) shall immediately transmit its findings of fact and recommendations for resolution of the dispute to the chief executive officer of the government involved and to the employee organization involved, (ii) may thereafter assist the parties to effect a voluntary resolution of the dispute, and (iii) shall within five days of such transmission make public such findings and recommendations;

(d) in the event that the findings of fact and recommendations are made public by a fact-finding board appointed by the board or established pursuant to procedures agreed upon by the parties under subdivision two of this section, and the impasse continues, the public employment relations board shall have the power to take whatever steps it deems appropriate to resolve the dispute, including (i) the making of recommendations after giving due consideration to the findings of fact and recommendations of such fact-finding board, but no further fact-finding board shall be appointed and (ii) upon the request of the parties, assistance in providing or voluntary arbitration;

(e) should either the public employer or the employee organization not accept in whole or in part the recommendations of the fact-finding board, (i) the chief executive officer of the government involved shall, within ten days after receipt of the findings of fact and recommendations of the fact-finding board, submit to the legislative body of the government involved a copy of the findings of fact and recommendations of the fact-finding board, together with his recommendations for settling the dispute; (ii) the employee organization may submit to such legislative body its recommendations for settling the dispute; (iii) the legislative body or a duly authorized committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the report of the fact-finding board; and (iv) thereafter, the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved.

(f) where the public employer is a school district, a board of cooperative educational services, a community college, the state university of New York, or the city university of New York, the provisions of subparagraphs (iii) and (iv) of paragraph (e) of this subdivision shall not apply, and (i) the board may afford the parties an opportunity to explain their positions with respect to the report of the fact-finding board at a meeting at which the legislative body, or a duly authorized committee thereof, may be present; (ii) thereafter, the legislative body may take such action as is necessary and appropriate to reach an agreement. The board may provide such assistance as may be appropriate.

4. On request of either party or upon its own motion, as provided in subdivision two of this section, and in the

event the board determines that an impasse exists in collective negotiations between such employee organization and a public employer as to the conditions of employment of officers or members of any organized fire department, or any other unit of the public employer which previously was a part of an organized fire department whose primary mission includes the prevention and control of aircraft fires, police force or police department of any county, city, town, village or fire or police district, and detective-investigators, criminal investigators or rackets investigators employed in the office of a district attorney, or as to the conditions of employment of members of any organized unit of troopers, commissioned or noncommissioned officers of the division of state police or as to the conditions of employment of members of any organized unit of investigators, senior investigators and investigator specialists of the division of state police, or as to the terms and conditions of employment of members of collective negotiating units designated as security services and security supervisors, who are police officers, who are forest ranger captains or who are employed by the state department of corrections and community supervision and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, or in regard to members of the collective negotiating unit designated as the agency police services unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law or who are forest rangers, or as to the conditions of employment of any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service as certified by the county sheriff and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council or Suffolk County correction officers or Suffolk county park police, the board shall render assistance as follows:

(a) to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator from a list of qualified persons maintained by the board;

(b) if the mediator is unable to effect settlement of the controversy within fifteen days after his appointment, either party may petition the board to refer the dispute to a public arbitration panel;

(c) (i) upon petition of either party, the board shall refer the dispute to a public arbitration panel as hereinafter provided;

(ii) the public arbitration panel shall consist of one member appointed by the public employer, one member appointed by the employee organization and one public member appointed jointly by the public employer and employee organization who shall be selected within ten days after receipt by the board of a petition for creation of the arbitration panel. If either party fails to designate its member to the public arbitration panel, the board shall promptly, upon receipt of a request by either party, designate a member associated in interest with the public employer or employee organization he is to represent. Each of the respective parties is to bear the cost of its member appointed or designated to the arbitration panel and each of the respective parties is to share equally the cost of the public member. If, within seven days after the mailing date, the parties are unable to agree upon the one public member, the board shall submit to the parties a list of qualified,

uninterested persons for the selection of the public member. Each party shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as public member. This process shall be completed within five days of receipt of this list. The parties shall notify the board of the designated public member. The public member shall be chosen as

chairman;

(iii) the public arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The panel may grant more than one adjournment each for each party; provided, however, that a second request of either party and any subsequent adjournments may be granted on request of either party, provided that the party which requests the adjournment shall pay the arbitrator's fee. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The panel shall have authority to require the production of such additional evidence, either oral or written as it may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties;

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

(1) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority. Notwithstanding the provisions of this subparagraph to the contrary, where the parties to a public arbitration are those anticipated by the provisions of paragraphs (e) and (f) of this subdivision the state and such parties may agree to confer

authority to the public arbitration panel to issue a final and binding determination for a period up to and including four years. ^

(ii) the determination of the public arbitration panel shall be subject to review by a court of competent jurisdiction in the manner prescribed by law.

(d) [As amended by L.2016, c.57, Part L, §1] The provisions of this subdivision shall expire July first, Two Thousand Nineteen.

(e) With regard to members of any organized unit of troopers, investigators, senior investigators, investigator specialists, and commissioned or non-commissioned officers of the division of state police, the provisions of this section shall not apply to issues relating to disciplinary procedures and investigations or eligibility and assignment to details and positions, which shall be governed by other provisions prescribed by law.

(f) With regard to any members of collective negotiating units designated as security services or security supervisors, who are police officers, who are forest ranger captains or who are employed by the state department of corrections and community supervision and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, or in regard to members of the collective negotiating unit designated as the agency police services unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law or who are forest rangers, or in regard to detective-investigators, criminal investigators or rackets investigators employed in the office of a district attorney of a county contained within a city with a population of one million or more, the provisions of this section shall only apply to the terms of collective bargaining agreements directly relating to compensation, including but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed [sic] by law.

(g) With regard to members of any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service as certified by the county sheriff and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council, the provisions of this section shall only apply to the terms of collective bargaining agreements directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed [sic] by law. Provided, further, that with regard to any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council, the provisions of this subdivision pertaining to interest arbitration shall only apply in the event that the collective bargaining agreement between the public employer and the public employee organization has been expired for a period of not less than twelve months and the parties have fully utilized all other impasse resolution procedures available under this subdivision.

(h) With regard to Suffolk county correction officers the provisions of this section shall not apply to issues relating to disciplinary procedures and investigations or eligibility and assignment to details and positions, which shall be governed by other provisions prescribed by law.

(i) With regard to Suffolk county park police officers the provisions of this section shall not apply to issues relating to disciplinary procedures and investigations or eligibility and assignment to details and positions, which shall be governed by other provisions prescribed by law.

4-a. Notwithstanding anything in subdivision four of this section to the contrary, a public employer that is a fiscally eligible municipality, as defined in section 160.05 of the local finance law, and is otherwise subject to subdivision four of this section, upon resolution of its governing body with the concurrence of its chief executive officer, and a public employee organization subject to subdivision four of this section may, jointly, stipulate and agree that an impasse exists, at any time, with respect to collective negotiations between the parties for a collective bargaining agreement and, in lieu of commencing a proceeding under subdivision four of this section, may jointly request that the financial restructuring board for local governments, established in section 160.05 of the local finance law, resolve such impasse. A joint request pursuant to this subdivision shall be irrevocable.

(b) The financial restructuring board for local governments shall render a just and reasonable determination of the matters in dispute by an affirmative vote of a majority of the total number of its members. In arriving at such determination, it shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, those factors set forth in subdivision six of this section. In all matters regarding public disclosure of its proceedings and findings, it shall be treated the same as the panel convened pursuant to subdivision four of this section. It shall render a determination within six months of being formally requested by the parties to convene.

(c) Each party before the financial restructuring board for local governments may be heard either in person, by counsel, or by other representatives, as they may respectively designate and may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The board shall have authority to require the production of additional evidence, either oral or written, as it may desire from the parties. All proceedings, meetings and hearings conducted by the board shall be held in the city of Albany.

(d) The determination of the financial restructuring board for local governments with respect to the conditions of employment presented to it pursuant to this section shall be final and binding upon the parties for the period prescribed by such board, but in no event shall such period exceed four years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed four years from the date of determination by the board. Such determination shall not be subject to the approval of any local legislative body or other municipal authority, and shall only be subject to review by a court of competent jurisdiction in the manner prescribed by law.

5. [Expires July 1, 2019 pursuant to L.2016, c.57] (a) In the event that the board certifies that a voluntary

resolution of the contract negotiations between either (i) the New York city transit authority (hereinafter referred to as TA-public employer) and the public employee organization certified or recognized to represent the majority of employees of such TA-public employer, or (ii) the metropolitan transportation authority, including its subsidiaries, the New York city transit authority, including its subsidiary, and the Triborough bridge and tunnel authority (all hereinafter referred to as MTA-public employer) and a public employee organization certified or recognized to represent employees of such MTA-public employer not subject to the jurisdiction of the Federal Railway Labor Act [45 U.S.C.A. §3151 et seq.] and not subject to the provisions of subparagraph (i) hereof, which has made an election pursuant to paragraph (f) of this subdivision, cannot be effected, or upon the joint request of the TA-public employer or the MTA-public employer (hereinafter jointly referred to as public employer) and any such affected employee organization, such board shall refer the dispute to a public arbitration panel, consisting of one member appointed by the public employer, one member appointed by the employee organization and one public member appointed jointly by the public employer and employee organization who shall be selected within ten days after receipt by the board of a petition for creation of the arbitration panel. If either party fails to designate its member to the public arbitration panel, the board shall promptly, upon receipt of a request by either party, designate a member associated in interest with the public employer or employee organization he is to represent. Each of the respective parties is to bear the cost of its member appointed or designated to the arbitration panel and each of the respective parties is to share equally the cost of the public member. If, within seven days after the mailing date, the parties are unable to agree upon the one public member, the board shall submit to the parties a list of qualified, disinterested persons for the selection of the public member. Each party shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as public member. This process shall be completed within five days of receipt of this list. The parties shall notify the board of the designated public member. The public member shall be chosen as chairman.

(b) The arbitration panel shall hold hearings on all matters within the scope of negotiations related to the dispute for which the panel was appointed. The parties may be heard either in person, by counsel or by other representatives as they may respectively designate. The parties may present, either orally or in writing or both, statement [sic] of fact, supporting witnesses and other evidence and argument of their respective position [sic] with respect to each case. The panel shall have authority to require the production of such additional evidence, either oral or written, as it may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties.

(c) All matters presented to such panel for its determination shall be decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in dispute before it, may refer the issue back to the parties for further negotiations.

(d) Such panel shall make a just and reasonable determination of matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

(i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

(ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

(iii) the impact of the panel's award on the financial ability of the public employer to pay, on the present fares and on the continued provision of services to the public;

(iv) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(v) the interest and welfare of the public; and

(vi) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits and other working conditions in collective negotiations or impasse panel proceedings.

(e) The panel shall have full authority to resolve the matters in dispute before it and issue a determination which shall be final and binding upon the parties, notwithstanding any other provision of this article. Except for the purposes of judicial review, any provision of a determination of the arbitration panel, the implementation of which requires an enactment of law, shall not become binding until the appropriate legislative body enacts such law.

(f) (i) Within sixty days of the enactment of this provision, and only within such time period, any such public employee organization described in subparagraph (ii) of paragraph (a) of this subdivision may elect to be covered by the provisions of this section by filing in writing a notice of participation with the chairman of the board and the chairman of the metropolitan transportation authority.

(ii) Within sixty days of the enactment of this subparagraph and only within such time period, any such public employee organization certified or recognized to represent employees of an MTA-public employer (described in subparagraph (ii) of paragraph (a) of this subdivision) not subject to the jurisdiction of the Federal Railway Labor Act but which was subject to such jurisdiction during the sixty-day period set forth in subparagraph (i) of this paragraph may elect to be covered by the provisions of this section by filing in writing a notice of participation with the chairman of the board and the chairman of the metropolitan transportation authority.

(iii) Once such an election is made pursuant to subparagraph (i) or (ii) of this paragraph, any such public employee organization shall thereafter be subject to the provisions of this section unless such organization

and the chairman of the metropolitan transportation authority file a joint agreement in writing with the chairman of the board that provides for a rescission of the election made pursuant to this paragraph.

(g) This subdivision shall not apply to a certified or recognized public employee organization which represents

any public employees described in subdivision sixteen of section twelve hundred four of the public authorities law and nothing contained within this section shall be construed to divest the public employment relations board or any court of competent jurisdiction of the full power or authority to enforce any order made by the board or such court prior to the effective date of this subdivision.

6. [Eff. on and after April 1, 2013 pursuant to L.2013, c. 67, §7 (states: This act shall take effect immediately, provided that sections one, two and three of this act shall take effect on the ninetieth day after it shall have become a law and sections four and five of this act shall be deemed to have been in full force and effect on and after April 1, 2013; and provided, further, that sections three, four and five of this act shall apply to all agreements and interest arbitration determinations that expire before, on or after April 1, 2013 except those (a) where the public employment relations board received a petition to refer the dispute to a public arbitration panel pursuant to subdivision 4 of section 209 of the civil service law before June 14, 2013 or (b) where the public employment relations board received a declaration of impasse pursuant to subdivision 4 of section 209 of the civil service law on or after April 1, 2013 but on or before June 14, 2013.))]

(a) For disputes concerning an impasse pursuant to subdivision four of this section that involve a county, city, town, or village subject to section three-c of the general municipal law, a public arbitration panel shall make a determination as to whether such county, city, town, or village, is a public employer that is a fiscally eligible municipality as part of its analysis of the financial ability of the public employer to pay.

(b) In evaluating whether a public employer covered by this subdivision is a fiscally eligible municipality, such public arbitration panel shall consider the average full value property tax rate of such public employer and the average fund balance percentage of such public employer.

(i) For purposes of this subdivision, "full value property tax rate" shall mean the amount to be raised by tax on real estate by a local government in a given fiscal year divided by the full valuation of taxable real estate for that same fiscal year as reported to the office of the state comptroller.

(ii) For purposes of this subdivision, "average full value property tax rate" shall mean the sum of the full value property tax rates for the five most recent fiscal years divided by five.

(iii) For purposes of this subdivision, "fund balance percentage" shall mean the total fund balance in the general fund of a local government in a given fiscal year divided by the total expenditures from the general fund for that same fiscal year as reported to the office of the state comptroller.

(iv) For purposes of this subdivision, "average fund balance percentage" shall mean the sum of the fund balance percentages for the five most recently completed fiscal years divided by five.

(c)) If the average full value property tax rate of such public employer is greater than the average full value property tax rate of seventy-five percent of counties, cities, towns, and villages, with local fiscal years ending the same calendar year as of the most recently available information, the public arbitration panel must find that such public employer is a fiscally eligible municipality. The office of the state comptroller shall make publicly available the list of counties, cities, towns, and villages that have an average full value property tax rate that meets such criteria in each local fiscal year. If a public employer has not reported to the office of the

state comptroller the information necessary to calculate its average full value property tax rate, such public employer may not be deemed a fiscally eligible municipality and the provisions of this subdivision shall ~~not~~ apply.

(d) If the average fund balance percentage of such public employer is less than five percent and the state comptroller has certified that any additional fund balances in funds other than the general fund available for payment of arbitration awards in each year, if added to the fund balance of the general fund, would not cause the average fund balance percentage of such public employer to exceed five percent, the public arbitration panel must find that such public employer is a fiscally eligible municipality. The office of the state comptroller shall make publicly available the list of counties, cities, towns, and villages that have an average fund balance percentage that is less than five percent in each local fiscal year. If a public employer has not reported to the office of the state comptroller the information necessary to calculate its average fund balance percentage, such public employer may not be deemed a fiscally eligible municipality and the provisions of this subdivision shall not apply.

(e) When such public employer has been found to be a fiscally eligible municipality, the public arbitration panel shall, first and foremost, consider ability to pay by assigning a weight of seventy percent to that portion of the criterion contained within clause b of subparagraph (v) of paragraph (c) of subdivision four of this section that pertains only to the public employer's ability to pay. All other criteria contained in subparagraph (v) of paragraph (c) of subdivision four of this section, including that portion of clause b of subparagraph (v) of paragraph (c) of subdivision four of this section that pertains to the interest and welfare of the public, shall constitute an aggregate weight of thirty percent. Additionally, with respect to the total monetary value of any determination, the panel must recognize and take into account in its determination the constraints, obligations and requirements imposed by the real property tax cap pursuant to section three-c of the general municipal law upon the public employer involved in the dispute before the panel.

(f) [As amended by L.2016, c.57, Part L, §1] The provisions of this subdivision shall expire July first, Two Thousand Nineteen.

§209-a Improper Employer Practices; Improper Employee Organization Practices; Application

[Amended effective April 12, 2018; underlined material is new]

1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately

(a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights;

(b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights;

(c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or

participation in the activities of, any employee organization;

(d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees;

(e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article;

(f) to utilize any state funds appropriated for any purpose to train managers, supervisors or other administrative personnel regarding methods to discourage union organization or to discourage an employee from participating in a union organizing drive or

(g) to fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a representative of the employee organization, or the designee of such organization, which has been certified or recognized under this article when at the time of questioning by the employer of such employee it reasonably appears that he or she may be the subject of a potential disciplinary action.

If representation is requested, and the employee is a potential target of disciplinary action at the time of questioning, a reasonable period of time shall be afforded to the employee to obtain such representation.

It shall be an affirmative defense to any improper practice charge under paragraph (g) of this subdivision that the employee has the right, pursuant to statute, interest arbitration award, collectively negotiated agreement, policy or practice, to present to a hearing officer or arbitrator evidence of the employer's failure to provide representation and to obtain exclusion of the resulting evidence upon demonstration of such failure. Nothing in this section shall grant an employee any right to representation by the representative of an employee organization in any criminal investigation.

[Line breaks added solely to facilitate review of the text]

2. Improper employee organization practices. It shall be an improper practice for an employee organization or its agents deliberately

(a) to interfere with, restrain or coerce public employees in the exercise of the rights granted in section two hundred two, or to cause, or attempt to cause, a public employer to do so provided, however, that an employee organization does not interfere with, restrain or coerce public employees when it limits its services to and representation of non-members in accordance with this subdivision;

(b) to refuse to negotiate collectively in good faith with a public employer, provided it is the duly recognized or certified representative of the employees of such employer; or

(c) to breach its duty of fair representation to public employees under this article. Notwithstanding any law,

rule or regulation to the contrary, an employee organization's duty of fair representation to a public employee it represents but who is not a member of the employee organization shall be limited to the negotiation or enforcement of the terms of an agreement with the public employer. No provision of this article shall be construed to require an employee organization to provide representation to a non-member

(i) during questioning by the employer,

(ii) in statutory or administrative proceedings or to enforce statutory or regulatory rights, or

(iii) in any stage of a grievance, arbitration or other contractual process concerning the evaluation or discipline of a public employee where the non-member is permitted to proceed without the employee organization and be represented by his or her own advocate.

Nor shall any provision of this article prohibit an employee organization from providing legal, economic or job-related services or benefits beyond those provided in the agreement with a public employer only to its members.

3. The public employer shall be made a party to any charge filed under subdivision two of this section which alleges that the duly recognized or certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its agreement with such employee organization.

[Expires June 30, 2019 pursuant to L.2016, c.57] Injunctive relief. (a) A party filing an improper practice charge under this section may petition the board to obtain injunctive relief, pending a decision on the merits of said charge by an administrative law judge, upon a showing that: (i) there is reasonable cause to believe an improper practice has occurred, and (ii) where it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief.

(b) Within ten days of the receipt by the board of such petition, if the board determines that a charging party has made a sufficient showing both that there is reasonable cause to believe an improper practice has occurred and it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to the status quo to provide meaningful relief, the board shall petition the supreme court, in Albany county, upon notice to all parties for the necessary injunctive relief or in the alternative may issue an order permitting the charging party to seek injunctive relief by petition to the supreme court, in which case the board must be joined as a necessary party. The board or, where applicable, the charging party, shall not be required to give any undertakings or bond and shall not be liable for any damages or costs which may have been sustained by reason of any injunctive relief ordered. If the board fails to act within ten days as provided herein, the board, for purposes of review, shall be deemed to have made a final order determining not to seek injunctive relief.

(c) If after review, the board determines that a charging party has not made a sufficient showing and that no petition to the court is appropriate under paragraph (b) of this subdivision, such determination shall be deemed a final order and may be immediately reviewed pursuant to and upon the standards provided by article seventy-eight of the civil practice law and rules upon petition by the charging party in supreme court,

Albany county.



(d) Injunctive relief may be granted by the court, after hearing all parties, if it determines that there is reasonable cause to believe an improper practice has occurred and that it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief. Such relief shall expire on decision by an administrative law judge finding no improper practice to have occurred, successful appeal or motion by respondent to vacate or modify pursuant to the provisions of the civil practice law and rules, or subsequent finding by the board that no improper practice had occurred. The administrative law judge shall conclude the hearing process and issue a decision on the merits within sixty days after the imposition of such injunctive relief unless mutually agreed by the respondent and charging party.

(e) A decision on the merits of the improper practice charge by an administrative law judge finding an improper practice to have occurred shall continue the injunctive relief until either: (i) the respondent fails to file exceptions to the decision and implements the remedy, or (ii) the respondent successfully moves in court, upon notice, to vacate or modify the injunctive relief pursuant to provisions of the civil practice law and rules.

(f) Any injunctive relief in effect pending a decision by the board on exceptions: (i) shall expire upon a decision by the board finding no improper practice to have occurred, of which the board shall notify the court immediately, or (ii) shall remain in effect only to the extent it implements any remedial order issued by the board in its decision, of which the board shall notify the court immediately.

(g) All matters in which the court has granted injunctive relief pursuant to this subdivision shall be given preference in the scheduling, hearing and disposition over all other matters before the board or its administrative law judges.

(h) The appeal of any order granting, denying, modifying or vacating injunctive relief ordered by the court pursuant to this subdivision shall be made in accordance with the provisions of article fifty-five of the civil practice and rules except that where such injunctive relief is stayed pursuant to section fifty-five hundred nineteen of the civil practice law and rules, an appeal for removal of such stay may be given preference in the same manner as provided in rule fifty-five hundred twenty-one of the civil practice law and rules.

(i) Nothing in this section shall be deemed to eliminate or diminish any right that may exist pursuant to any other law.

(j) Pursuant to paragraph (d) of subdivision five of section two hundred five of this article, the board shall make such rules and regulations as may be appropriate to effectuate the purposes and provisions of this subdivision.

[Expires June 30, 2019 pursuant to L.2016, c.57] Injunctive relief before the New York city board of collective bargaining. (a) A party filing an improper practice charge under section 12-306 of the administrative code of the city of New York may petition the board of collective bargaining to obtain injunctive relief before the supreme court, New York county, pending a decision on the merits by the board of collective bargaining,

upon a showing that: (i) there is reasonable cause to believe an improper practice has occurred, and (ii) where it appears that immediate and irreparable injury, loss or damage will result and thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief.

(b) Within ten days of the receipt by the board of such petition, if the board of collective bargaining determines that a charging party has made a sufficient showing both that there is reasonable cause to believe an improper practice has occurred and it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief, said board shall petition the supreme court in New York county, upon notice to all parties, for the necessary injunctive relief, or in the alternative said board may issue an order permitting the charging party to seek injunctive relief by petition to the supreme court, New York county, in which case said board must be joined as a necessary party. Such application shall be in conformance with the civil practice law and rules except that said board, or where applicable, the charging party shall not be required to give any undertaking or land [sic] and shall not be liable for any damages or costs which may have been sustained by reason of any injunctive relief order. If the board of collective bargaining fails to act within ten days as provided in this paragraph, the board of collective bargaining, for purposes of review, shall be deemed to have made a final order determining not to permit the charging party to seek injunctive relief.

(c) If after review, the board of collective bargaining determines that a charging party has not made a sufficient showing and that no petition to the court is appropriate under paragraph (b) of this subdivision, such determination shall be deemed a final order and may be immediately reviewed pursuant to article seventy-eight of the civil practice law and rules upon petition by the charging party to the supreme court, New York county.

(d) Injunctive relief may be granted by the court, after hearing all parties, if it determines that there is reasonable cause to believe an improper practice has occurred and that it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief. Any injunctive relief granted by the court shall expire upon decision of the board of collective bargaining finding no improper practice to have occurred or successful challenge of the said board's decision pursuant to article seventy-eight of the civil practice law and rules. The said board shall conclude the hearing process and issue a decision on the merits within sixty days after the imposition of such injunctive relief unless mutually agreed by the respondent and charging party.

(e) A decision on the merits of the improper practice charge by the board of collective bargaining finding an improper practice to have occurred shall continue the injunctive relief until either: (i) the respondent fails to appeal the decision and implements the remedy, or (ii) the respondent successfully moves in court, upon notice, to vacate or modify the injunctive relief pursuant to provisions of the civil practice law and rules.

(f) Any injunctive relief in effect pending a decision by the board of collective bargaining on appeal: (i) shall expire upon a decision by the said board finding no improper practice to have occurred, of which the said board shall notify the court immediately, or (ii) shall remain in effect only to the extent it implements any remedial order issued by the said board of [sic] its decision, of which the said board shall notify the court

immediately.

(g) All matters in which the court has granted injunctive relief upon petition by the charging party pursuant to this subdivision shall be given preference in the scheduling, hearing and disposition over all other matters before the said board. The said board shall establish rules and regulations dealing with the implementation of this section including time limits for its own actions.

(h) The appeal of any order granting, denying, modifying or vacating injunctive relief ordered by the court pursuant to this subdivision shall be made in accordance with the provisions of article fifty-five of the civil practice law and rules except that where such injunctive relief is stayed pursuant to section fifty-five hundred nineteen of the civil practice law and rules, an appeal for removal of such stay may be given preference in the same manner as provided in rule fifty-five hundred twenty-one of the civil practice law and rules.

(i) Nothing in this section shall be deemed to eliminate or diminish any right that may exist pursuant to any other law.

(j) The board of collective bargaining shall make such rules and regulations as may be appropriate to effectuate the purposes and provisions of this subdivision.

6. Application. In applying this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent.

§210 Prohibition of Strikes

1. No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike.

2. Violations and penalties; presumption; prohibition against consent to strike; determination; notice; probation; payroll deductions; objections; and restoration.

(a) Violations and penalties. A public employee shall violate this subdivision by engaging in a strike or violating paragraph (c) of this subdivision and shall be liable as provided in this subdivision pursuant to the procedures contained herein. In addition, any public employee who violates subdivision one of this section may be subject to removal or other disciplinary action provided by law for misconduct.

(b) Presumption. For purposes of this subdivision an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties in his normal manner without

permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates.

(c) Prohibition against consent to strike. No person exercising on behalf of any public employer any authority,

supervision or direction over any public employee shall have the power to authorize, approve, condone or consent to a strike, or the engaging in a strike, by one or more public employees, and such person shall ~~not~~ authorize, approve, condone or consent to such strike or engagement.

(d) Determination. In the event that it appears that a violation of this subdivision may have occurred, the chief executive officer of the government involved shall, on the basis of such investigation and affidavits as he may deem appropriate, determine whether or not such violation has occurred and the date or dates of such violation. If the chief executive officer determines that such violation has occurred, he shall further determine, on the basis of such further investigation and affidavits as he may deem appropriate, the names of employees who committed such violation and the date or dates thereof. Such determination shall not be deemed to be final until the completion of the procedures provided for in this subdivision.

(e) Notice. The chief executive officer shall forthwith notify each employee that he has been found to have committed such violation, the date or dates thereof and of his right to object to such determination pursuant to paragraph (g) of this subdivision; he shall also notify the chief fiscal officer of the names of all such employees and of the total number of days, or part thereof, on which it has been determined that such violation occurred. Notice to each employee shall be by personal service or by certified mail to his last address filed by him with his employer.

(f) Payroll deductions. Not earlier than thirty nor later than ninety days following the date of such determination, the chief fiscal officer of the government involved shall deduct from the compensation of each such public employee an amount equal to twice his daily rate of pay for each day or part thereof that it was determined that he had violated this subdivision; such rate of pay to be computed as of the time of such violation. In computing such deduction, credit shall be allowed for amounts already withheld from such employee's compensation on account of his absence from work or other withholding of services on such day or days. In computing the aforesaid thirty to ninety day period of time following the determination of a violation pursuant to subdivision (d) of paragraph two of this section and where the employee's annual compensation is paid over a period of time which is less than fifty-two weeks, 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 shall be disregarded and not counted.

(g) Objections and restoration. Any employee determined to have violated this subdivision may object to such determination by filing with the chief executive officer, (within twenty days of the date on which notice was served or mailed to him pursuant to paragraph (e) of this subdivision) his sworn affidavit, supported by available documentary proof, containing a short and plain statement of the facts upon which he relies to show that such determination was incorrect. Such affidavit shall be subject to the penalties of perjury. If the chief executive officer shall determine that the affidavit and supporting proof establishes that the employee did not violate this subdivision, he shall sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to establish that the employee did not violate this subdivision, he shall dismiss the objection and so notify the employee. If the chief executive officer shall determine that the affidavit and supporting proof raises a question of fact which, if resolved in favor of the employee, would establish that the employee did not violate this subdivision, he shall appoint a hearing officer to determine whether in fact the employee did violate this subdivision after a hearing at which such employee shall bear the burden of proof. If the hearing officer shall determine that the employee failed to establish that he did not

violate this subdivision, the chief executive officer shall so notify the employee. If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that such employee did not violate this subdivision, the chief executive officer shall forthwith notify the chief fiscal officer who shall thereupon cease all further deductions and refund any deductions previously made pursuant to this subdivision. The determinations provided in this paragraph shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

3.(a) An employee organization which is determined by the board to have violated the provisions of subdivision one of this section shall, in accordance with the provisions of this section, lose the rights granted pursuant to the provisions of paragraph (b) of subdivision one of section two hundred eight of this chapter.

(b) In the event that it appears that a violation of subdivision one of this section may have occurred, it shall be the duty of the chief executive officer of the public employer involved (i) forthwith to so notify the board and the chief legal officer of the government involved, and (ii) to provide the board and such chief legal officer with such facilities, assistance and data as will enable the board and such chief legal officer to carry out their duties under this section.

(c) In the event that it appears that a violation of subdivision one of this section may have occurred, the chief legal officer of the government involved, or the board on its own motion, shall forthwith institute proceedings before the board to determine whether such employee organization has violated the provisions of subdivision one of this section.

(d) Proceedings against an employee organization under this section shall be commenced by service upon it of a written notice, together with a copy of the charges. A copy of such notice and charges shall also be served, for their information, upon the appropriate government officials who recognize such employee organization and grant to it the rights accompanying such recognition. The employee organization shall have eight days within which to serve its written answer to such charges. The board's hearing shall be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses in their behalf. Compliance with the technical rules of evidence shall not be required.

(e) In determining whether an employee organization has violated subdivision one of this section, the board shall consider (i) whether the employee organization called the strike or tried prevent it, and (ii) whether the employee organization made or was making good faith efforts to terminate the strike.

(f) If the board determines than an employee organization has violated the provisions of subdivision one of this section, the board shall order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision three of section two hundred eight of this chapter, for such specified period of time as the board shall determine, or, in the discretion of the board, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed on an employee organization pursuant to subdivision two of section seven hundred fifty-one of the judiciary law remains wholly or partly unpaid, after the exhaustion of the cash and securities of the

employee organization, the board shall direct that, notwithstanding such forfeiture, such membership dues deduction shall be continued to the extent necessary to pay such fine and such public employer shall transmit such moneys to the court. In fixing the duration of the forfeiture, the board shall consider all the relevant facts and circumstances, including but not limited to: (i) the extent of any willful defiance of subdivision one of this section (ii) the impact of the strike on the public health, safety, and welfare of the community and (iii) the financial resources of the employee organization; and the board may consider (i) the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the mediation and fact-finding procedures provided in section two hundred nine and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organization, the board shall consider both the income and the assets of such employee organization. In the event membership dues are collected by the public employer as provided in paragraph (b) of subdivision one of section two hundred eight of this chapter, the books and records of such public employer shall be prima facie evidence of the amount so collected.

(g) An employee organization whose rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision three of section two hundred eight of this article have been ordered forfeited pursuant to this section may be granted such rights after the termination of such forfeiture only after complying with the provisions of clause (b) of subdivision three of section two hundred seven of this article.

(h) No compensation shall be paid by a public employer to a public employee with respect to any day or part thereof when such employee is engaged in a strike against such employer. The chief fiscal officer of the government involved shall withhold such compensation upon receipt of the notice provided by paragraph (e) of subdivision two of section two hundred ten; notwithstanding the failure to have received such notice, no public employee or officer having knowledge that such employee has so engaged in such a strike shall deliver or cause to be delivered to such employee any cash, check or payment which, in whole or in part, represents such compensation.

4. Within sixty days of the termination of a strike, the chief executive officer of the government involved shall prepare and make public a report in writing, which shall contain the following information: (a) the circumstances surrounding the commencement of the strike, (b) the efforts used to terminate the strike, (c) the names of those public employees whom the public officer or body had reason to believe were responsible for causing, instigating or encouraging the strike and (d) related to the varying degrees of individual responsibility, the sanctions imposed or proceedings pending against each such individual public employee.

§211 Application for Injunctive Relief

Notwithstanding the provisions of section eight hundred seven of the labor law, where it appears that public employees or an employee organization threaten or are about to do, or are doing, an act in violation of section two hundred ten of this article, the chief executive officer of the government involved shall (a) forthwith notify the chief legal officer of the government involved, and (b) provide such chief legal officer with such facilities,

assistance and data as will enable the chief legal officer to carry out his duties under this section, and, notwithstanding the failure or refusal of the chief executive officer to act as aforesaid, the chief legal officer of the government involved shall forthwith apply to the supreme court for an injunction against such violation. If an order of the court enjoining or restraining such violation does not receive compliance, such chief legal officer shall forthwith apply to the supreme court to punish such violation under section seven hundred fifty of the judiciary law.

§212 Local Government Procedures

1. This article, except sections two hundred one, two hundred two, two hundred three, two hundred four, paragraph b of subdivision four and paragraph d of subdivision five of section two hundred five, paragraph b of subdivision three of section two hundred seven, section two hundred eight, section two hundred nine-a, subdivisions one and two of section two hundred ten, section two hundred eleven, two hundred thirteen and two hundred fourteen, shall be inapplicable to any government (other than the state or a state public authority) which, acting through its legislative body, has adopted by local law, ordinance or resolution, its own provisions and procedures which have been submitted to the board by such government and as to which there is in effect a determination by the board that such provisions and procedures and the continuing implementation thereof are substantially equivalent to the provisions and procedures set forth in this article with respect to the state.

2. With respect to the city of New York, such provisions and procedures need not be related to the end of its fiscal year; and with respect to provisions and procedures adopted by local law by the city of New York no such submission to or determination by the board shall be required, but such provisions and procedures shall be of full force and effect unless and until such provisions and procedures, or the continuing implementation thereof, are found by a court of competent jurisdiction, in an action brought by the board in the county of New York for a declaratory judgment, not to be substantially equivalent to the provisions and procedures set forth in this article.

3. Notwithstanding any other provision of law to the contrary, the resolution of disputes in the course of collective negotiations as provided by section two hundred nine of this article shall apply to any organized fire department, police force, or police department of any government and detective-investigators, or rackets investigators employed in the office of a district attorney of a county subject to either subdivision one or two of this section. Provided, however, that a recognized or certified employee organization may elect to continue dispute resolution procedures which existed on the day prior to the effective date of this subdivision by notifying the appropriate public employment relations board in writing.

§213 Judicial Review and Enforcement

1. Final orders of the board made pursuant to this article shall be conclusive against all parties to its proceedings and persons who have had an opportunity to be parties to its proceedings unless reversed or modified in proceedings for enforcement or judicial review as hereinafter provided. Final orders shall be (i) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved

party within thirty days after service by registered or certified mail of a copy of such order upon such party, and (ii) enforceable in a special proceeding, upon petition of such board, by the supreme court, provided, however, that an order of the board which determines whether an employer or employee is subject to this article may be deemed final when made.

(b) Orders of the board or its agents made pursuant to subdivisions one and two of section two hundred seven of this chapter shall be reviewable only in a proceeding brought under article seventy-eight of the civil practice law and rules to review an order of the board made pursuant to subdivision three of section two hundred seven of this chapter.

(c) If a proceeding by the board for enforcement of its order is instituted prior to the expiration of the period within which a party may seek judicial review of such order, the respondent may raise in his answer the questions authorized to be raised by section seven thousand eight hundred three of the civil practice law and rules and thereafter the proceedings shall be governed by the provisions of article seventy-eight of the civil practice law and rules that are not inconsistent herewith, except that if an issue specified in question four of section seven thousand eight hundred three of the civil practice law and rules is raised, the proceeding shall be transferred for disposition to the appellate division of the supreme court. Where an issue specified in question four of section seven thousand eight hundred three of the civil practice law and rules is raised, either in a proceeding to enforce or review an order of the board, the appellate division of the supreme court, upon completion of proceedings before it, shall remit a copy of its judgment or order to the court in which the proceeding was commenced, which court shall have the power to compel compliance with such judgment or order.

(d) In a proceeding to enforce or review an order of the board, the court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment or decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board.

(e) The failure to perform the duties required by subdivisions two and three of section two hundred ten of this chapter and by section two hundred eleven of this chapter shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules by any taxpayer, as defined in section one hundred two of this chapter. Any such taxpayer shall also have standing to institute any action described in subdivisions one and two of section one hundred two of this chapter.

§214 Management and Confidential Employees; Membership and Office in Employee Organizations

No managerial or confidential employee, as determined pursuant to subdivision seven of section two hundred one of this article, shall hold office in or be a member of any employee organization which is or seeks to become pursuant to this article the certified or recognized representative of the public employees employed by the public employer of such managerial or confidential employee.

Ohio

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 53

Representative Becker

**Cosponsors: Representatives Hood, Brinkman, Dean, Thompson, Vitale,
Goodman, Riedel, Roegner, Merrin, Antani, Zeltwanger, Keller**

A BILL

To amend sections 9.81, 121.40, 124.14, 124.15,
3345.31, 4117.03, 4117.04, 4117.05, 4117.09,
4117.10, 4117.11, 4121.03, 4121.121, 4121.69,
and 5501.20 of the Revised Code to remove any
requirement under the Public Employees
Collective Bargaining Law that public employees
join or pay dues to any employee organization,
to prohibit public employers from requiring
public employees to join or pay dues to any
employee organization, to prohibit an employee
organization from being required to represent
public employees who are not members of the
employee organization, and to make an
appropriation.

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

Section 1. That sections 9.81, 121.40, 124.14, 124.15,
3345.31, 4117.03, 4117.04, 4117.05, 4117.09, 4117.10, 4117.11,
4121.03, 4121.121, 4121.69, and 5501.20 of the Revised Code be
amended to read as follows:

Sec. 9.81. After an authorization adopted under section 19
9.80 of the Revised Code, any public officer or employee of any 20
department or division of the state, any political subdivision 21
or school district thereof, or of any institution supported in 22
whole or in part by the state, a county, or municipal 23
corporation, who desires to make a contribution by the payroll 24
deduction plan to one or more of the specified charitable 25
agencies which are corporations not for profit, community 26
chests, united funds, or other similar united community fund 27
organizations, may be permitted to have such contribution 28
payments deducted from the salary or wages due such public 29
officer or employee by filing a written request and 30
authorization signed by such public officer or employee and 31
specifying the amount of the deduction in each payroll period 32
with the fiscal officer of the state, political subdivision, or 33
school district, or institution by which such public officer or 34
employee is employed. Such authorization may be withdrawn in 35
writing by such public officer or employee at any time. No funds 36
may be withheld from the salary or wages of any such public 37
officer or employee for the purposes permitted by sections 9.80 38
and 9.81 of the Revised Code unless the withholding is 39
specifically, freely, and voluntarily authorized by that public 40
officer or employee in writing. 41

Upon receipt of evidence of such request by the 42
appropriate fiscal officer, or upon receipt of a written 43
deduction authorization under division (B) (2) ~~or (C)~~ of section 44
4117.09 of the Revised Code, such fiscal officer shall make such 45
deduction and shall, at periodic intervals to the extent of the 46
amount collected, pay the designated charitable agencies which 47
are corporations not for profit, community chests, united funds, 48
or other similar united community fund organizations, or the 49

exclusive representative designated under section 4117.05 of the 50
Revised Code. 51

Sec. 121.40. (A) There is hereby created the Ohio 52
commission on service and volunteerism consisting of twenty-one 53
voting members including the superintendent of public 54
instruction or the superintendent's designee, the chancellor of 55
higher education or the chancellor's designee, the director of 56
youth services or the director's designee, the director of aging 57
or the director's designee, the chairperson of the committee of 58
the house of representatives dealing with education or the 59
chairperson's designee, the chairperson of the committee of the 60
senate dealing with education or the chairperson's designee, and 61
fifteen members who shall be appointed by the governor with the 62
advice and consent of the senate and who shall serve terms of 63
office of three years. The appointees shall include educators, 64
including teachers and administrators; representatives of youth 65
organizations; students and parents; representatives of 66
organizations engaged in volunteer program development and 67
management throughout the state, including youth and 68
conservation programs; and representatives of business, 69
government, nonprofit organizations, social service agencies, 70
veterans organizations, religious organizations, or 71
philanthropies that support or encourage volunteerism within the 72
state. The director of the governor's office of faith-based and 73
community initiatives shall serve as a nonvoting ex officio 74
member of the commission. Members of the commission shall 75
receive no compensation, but shall be reimbursed for actual and 76
necessary expenses incurred in the performance of their official 77
duties. 78

(B) The commission shall appoint an executive director for 79
the commission, who shall be in the unclassified civil service. 80

The governor shall be informed of the appointment of an 81
executive director before such an appointment is made. The 82
executive director shall supervise the commission's activities 83
and report to the commission on the progress of those 84
activities. The executive director shall do all things necessary 85
for the efficient and effective implementation of the duties of 86
the commission. 87

The responsibilities assigned to the executive director do 88
not relieve the members of the commission from final 89
responsibility for the proper performance of the requirements of 90
this section. 91

(C) The commission or its designee shall do all of the 92
following: 93

(1) Employ, promote, supervise, and remove all employees 94
as needed in connection with the performance of its duties under 95
this section and may assign duties to those employees as 96
necessary to achieve the most efficient performance of its 97
functions, and to that end may establish, change, or abolish 98
positions, and assign and reassign duties and responsibilities 99
of any employee of the commission. Personnel employed by the 100
commission who are subject to Chapter 4117. of the Revised Code 101
and who are members of an exclusive representative as defined in 102
section 4117.01 of the Revised Code shall retain all of their 103
rights and benefits conferred pursuant to that chapter. Nothing 104
in this chapter shall be construed as eliminating or interfering 105
with Chapter 4117. of the Revised Code or the rights and 106
benefits conferred under that chapter to public employees or to 107
any bargaining unit. 108

(2) Maintain its office in Columbus, and may hold sessions 109
at any place within the state; 110

- (3) Acquire facilities, equipment, and supplies necessary 111
to house the commission, its employees, and files and records 112
under its control, and to discharge any duty imposed upon it by 113
law. The expense of these acquisitions shall be audited and paid 114
for in the same manner as other state expenses. For that 115
purpose, the commission shall prepare and submit to the office 116
of budget and management a budget for each biennium according to 117
sections 101.532 and 107.03 of the Revised Code. The budget 118
submitted shall cover the costs of the commission and its staff 119
in the discharge of any duty imposed upon the commission by law. 120
The commission shall not delegate any authority to obligate 121
funds. 122
- (4) Pay its own payroll and other operating expenses from 123
line items designated by the general assembly; 124
- (5) Retain its fiduciary responsibility as appointing 125
authority. Any transaction instructions shall be certified by 126
the appointing authority or its designee. 127
- (6) Establish the overall policy and management of the 128
commission in accordance with this chapter; 129
- (7) Assist in coordinating and preparing the state 130
application for funds under sections 101 to 184 of the "National 131
and Community Service Act of 1990," 104 Stat. 3127 (1990), 42 132
U.S.C.A. 12411 to 12544, as amended, assist in administering and 133
overseeing the "National and Community Service Trust Act of 134
1993," P.L. 103-82, 107 Stat. 785, and the americorps program in 135
this state, and assist in developing objectives for a 136
comprehensive strategy to encourage and expand community service 137
programs throughout the state; 138
- (8) Assist the state board of education, school districts, 139

the chancellor of higher education, and institutions of higher 140
education in coordinating community service education programs 141
through cooperative efforts between institutions and 142
organizations in the public and private sectors; 143

(9) Assist the departments of natural resources, youth 144
services, aging, and job and family services in coordinating 145
community service programs through cooperative efforts between 146
institutions and organizations in the public and private 147
sectors; 148

(10) Suggest individuals and organizations that are 149
available to assist school districts, institutions of higher 150
education, and the departments of natural resources, youth 151
services, aging, and job and family services in the 152
establishment of community service programs and assist in 153
investigating sources of funding for implementing these 154
programs; 155

(11) Assist in evaluating the state's efforts in providing 156
community service programs using standards and methods that are 157
consistent with any statewide objectives for these programs and 158
provide information to the state board of education, school 159
districts, the chancellor of higher education, institutions of 160
higher education, and the departments of natural resources, 161
youth services, aging, and job and family services to guide them 162
in making decisions about these programs; 163

(12) Assist the state board of education in complying with 164
section 3301.70 of the Revised Code and the chancellor of higher 165
education in complying with division (B)(2) of section 3333.043 166
of the Revised Code. 167

(D) The commission shall in writing enter into an 168

agreement with another state agency to serve as the commission's 169
fiscal agent. Before entering into such an agreement, the 170
commission shall inform the governor of the terms of the 171
agreement and of the state agency designated to serve as the 172
commission's fiscal agent. The fiscal agent shall be responsible 173
for all the commission's fiscal matters and financial 174
transactions, as specified in the agreement. Services to be 175
provided by the fiscal agent include, but are not limited to, 176
the following: 177

(1) Preparing and processing payroll and other personnel 178
documents that the commission executes as the appointing 179
authority; 180

(2) Maintaining ledgers of accounts and reports of account 181
balances, and monitoring budgets and allotment plans in 182
consultation with the commission; and 183

(3) Performing other routine support services that the 184
fiscal agent considers appropriate to achieve efficiency. 185

(E)(1) The commission, in conjunction and consultation 186
with the fiscal agent, has the following authority and 187
responsibility relative to fiscal matters: 188

(a) Sole authority to draw funds for any and all federal 189
programs in which the commission is authorized to participate; 190

(b) Sole authority to expend funds from their accounts for 191
programs and any other necessary expenses the commission may 192
incur and its subgrantees may incur; and 193

(c) Responsibility to cooperate with and inform the fiscal 194
agent fully of all financial transactions. 195

(2) The commission shall follow all state procurement, 196

fiscal, human resources, statutory, and administrative rule 197
requirements. 198

(3) The fiscal agent shall determine fees to be charged to 199
the commission, which shall be in proportion to the services 200
performed for the commission. 201

(4) The commission shall pay fees owed to the fiscal agent 202
from a general revenue fund of the commission or from any other 203
fund from which the operating expenses of the commission are 204
paid. Any amounts set aside for a fiscal year for the payment of 205
these fees shall be used only for the services performed for the 206
commission by the fiscal agent in that fiscal year. 207

(F) The commission may accept and administer grants from 208
any source, public or private, to carry out any of the 209
commission's functions this section establishes. 210

Sec. 124.14. (A) (1) The director of administrative 211
services shall establish, and may modify or rescind, a job 212
classification plan for all positions, offices, and employments 213
in the service of the state. The director shall group jobs 214
within a classification so that the positions are similar enough 215
in duties and responsibilities to be described by the same 216
title, to have the same pay assigned with equity, and to have 217
the same qualifications for selection applied. The director 218
shall assign a classification title to each classification 219
within the classification plan. However, the director shall 220
consider in establishing classifications, including 221
classifications with parenthetical titles, and assigning pay 222
ranges such factors as duties performed only on one shift, 223
special skills in short supply in the labor market, recruitment 224
problems, separation rates, comparative salary rates, the amount 225
of training required, and other conditions affecting employment. 226

The director shall describe the duties and responsibilities of 227
the class, establish the qualifications for being employed in 228
each position in the class, and file with the secretary of state 229
a copy of specifications for all of the classifications. The 230
director shall file new, additional, or revised specifications 231
with the secretary of state before they are used. 232

The director shall assign each classification, either on a 233
statewide basis or in particular counties or state institutions, 234
to a pay range established under section 124.15 or section 235
124.152 of the Revised Code. The director may assign a 236
classification to a pay range on a temporary basis for a period 237
of six months. The director may establish experimental 238
classification plans for some or all employees paid directly by 239
warrant of the director of budget and management. Any such 240
experimental classification plan shall include specifications 241
for each classification within the plan and shall specifically 242
address compensation ranges, and methods for advancing within 243
the ranges, for the classifications, which may be assigned to 244
pay ranges other than the pay ranges established under section 245
124.15 or 124.152 of the Revised Code. 246

(2) The director of administrative services may reassign 247
to a proper classification those positions that have been 248
assigned to an improper classification. If the compensation of 249
an employee in such a reassigned position exceeds the maximum 250
rate of pay for the employee's new classification, the employee 251
shall be placed in pay step X and shall not receive an increase 252
in compensation until the maximum rate of pay for that 253
classification exceeds the employee's compensation. 254

(3) The director may reassign an exempt employee, as 255
defined in section 124.152 of the Revised Code, to a bargaining 256

unit classification if the director determines that the 257
bargaining unit classification is the proper classification for 258
that employee. Notwithstanding Chapter 4117. of the Revised Code 259
or instruments and contracts negotiated under it, these 260
placements are at the director's discretion. 261

(4) The director shall assign related classifications, 262
which form a career progression, to a classification series. The 263
director shall assign each classification in the classification 264
plan a five-digit number, the first four digits of which shall 265
denote the classification series to which the classification is 266
assigned. When a career progression encompasses more than ten 267
classifications, the director shall identify the additional 268
classifications belonging to a classification series. The 269
additional classifications shall be part of the classification 270
series, notwithstanding the fact that the first four digits of 271
the number assigned to the additional classifications do not 272
correspond to the first four digits of the numbers assigned to 273
other classifications in the classification series. 274

(B) Division (A) of this section and sections 124.15 and 275
124.152 of the Revised Code do not apply to the following 276
persons, positions, offices, and employments: 277

(1) Elected officials; 278

(2) Legislative employees, employees of the legislative 279
service commission, employees in the office of the governor, 280
employees who are in the unclassified civil service and exempt 281
from collective bargaining coverage in the office of the 282
secretary of state, auditor of state, treasurer of state, and 283
attorney general, and employees of the supreme court; 284

(3) Any position for which the authority to determine 285

compensation is given by law to another individual or entity; 286

(4) Employees of the bureau of workers' compensation whose 287
compensation the administrator of workers' compensation 288
establishes under division (B) of section 4121.121 of the 289
Revised Code. 290

(C) The director may employ a consulting agency to aid and 291
assist the director in carrying out this section. 292

(D) (1) When the director proposes to modify a 293
classification or the assignment of classes to appropriate pay 294
ranges, the director shall notify the appointing authorities of 295
the affected employees before implementing the modification. The 296
director's notice shall include the effective date of the 297
modification. The appointing authorities shall notify the 298
affected employees regarding the modification. 299

(2) When the director proposes to reclassify any employee 300
in the service of the state so that the employee is adversely 301
affected, the director shall give to the employee affected and 302
to the employee's appointing authority a written notice setting 303
forth the proposed new classification, pay range, and salary. 304
Upon the request of any classified employee in the service of 305
the state who is not serving in a probationary period, the 306
director shall perform a job audit to review the classification 307
of the employee's position to determine whether the position is 308
properly classified. The director shall give to the employee 309
affected and to the employee's appointing authority a written 310
notice of the director's determination whether or not to 311
reclassify the position or to reassign the employee to another 312
classification. An employee or appointing authority desiring a 313
hearing shall file a written request for the hearing with the 314
state personnel board of review within thirty days after 315

receiving the notice. The board shall set the matter for a 316
hearing and notify the employee and appointing authority of the 317
time and place of the hearing. The employee, the appointing 318
authority, or any authorized representative of the employee who 319
wishes to submit facts for the consideration of the board shall 320
be afforded reasonable opportunity to do so. After the hearing, 321
the board shall consider anew the reclassification and may order 322
the reclassification of the employee and require the director to 323
assign the employee to such appropriate classification as the 324
facts and evidence warrant. As provided in division (A)(1) of 325
section 124.03 of the Revised Code, the board may determine the 326
most appropriate classification for the position of any employee 327
coming before the board, with or without a job audit. The board 328
shall disallow any reclassification or reassignment 329
classification of any employee when it finds that changes have 330
been made in the duties and responsibilities of any particular 331
employee for political, religious, or other unjust reasons. 332

(E)(1) Employees of each county department of job and 333
family services shall be paid a salary or wage established by 334
the board of county commissioners. The provisions of section 335
124.18 of the Revised Code concerning the standard work week 336
apply to employees of county departments of job and family 337
services. A board of county commissioners may do either of the 338
following: 339

(a) Notwithstanding any other section of the Revised Code, 340
supplement the sick leave, vacation leave, personal leave, and 341
other benefits of any employee of the county department of job 342
and family services of that county, if the employee is eligible 343
for the supplement under a written policy providing for the 344
supplement; 345

(b) Notwithstanding any other section of the Revised Code, 346
establish alternative schedules of sick leave, vacation leave, 347
personal leave, or other benefits for employees not inconsistent 348
with the provisions of a collective bargaining agreement 349
covering the affected employees. 350

(2) Division (E) (1) of this section does not apply to 351
employees for whom the state employment relations board 352
establishes appropriate bargaining units pursuant to section 353
4117.06 of the Revised Code, except in ~~either~~any of the 354
following situations: 355

(a) The employees for whom the state employment relations 356
board establishes appropriate bargaining units elect no 357
representative in a board-conducted representation election. 358

(b) After the state employment relations board establishes 359
appropriate bargaining units for such employees, all employee 360
organizations withdraw from a representation election. 361

(c) An employee who is a member of the bargaining unit 362
elects not to be a member of the exclusive representative 363
selected by the employees within the bargaining unit. 364

(F) (1) Notwithstanding any contrary provision of sections 365
124.01 to 124.64 of the Revised Code, the board of trustees of 366
each state university or college, as defined in section 3345.12 367
of the Revised Code, shall carry out all matters of governance 368
involving the officers and employees of the university or 369
college, including, but not limited to, the powers, duties, and 370
functions of the department of administrative services and the 371
director of administrative services specified in this chapter. 372
Officers and employees of a state university or college shall 373
have the right of appeal to the state personnel board of review 374

as provided in this chapter. 375

(2) Each board of trustees shall adopt rules under section 376
111.15 of the Revised Code to carry out the matters of 377
governance described in division (F)(1) of this section. Until 378
the board of trustees adopts those rules, a state university or 379
college shall continue to operate pursuant to the applicable 380
rules adopted by the director of administrative services under 381
this chapter. 382

(G)(1) Each board of county commissioners may, by a 383
resolution adopted by a majority of its members, establish a 384
county personnel department to exercise the powers, duties, and 385
functions specified in division (G) of this section. As used in 386
division (G) of this section, "county personnel department" 387
means a county personnel department established by a board of 388
county commissioners under division (G)(1) of this section. 389

(2)(a) Each board of county commissioners, by a resolution 390
adopted by a majority of its members, may designate the county 391
personnel department of the county to exercise the powers, 392
duties, and functions specified in sections 124.01 to 124.64 and 393
Chapter 325. of the Revised Code with regard to employees in the 394
service of the county, except for the powers and duties of the 395
state personnel board of review, which powers and duties shall 396
not be construed as having been modified or diminished in any 397
manner by division (G)(2) of this section, with respect to the 398
employees for whom the board of county commissioners is the 399
appointing authority or co-appointing authority. 400

(b) Nothing in division (G)(2) of this section shall be 401
construed to limit the right of any employee who possesses the 402
right of appeal to the state personnel board of review to 403
continue to possess that right of appeal. 404

(c) Any board of county commissioners that has established 405
a county personnel department may contract with the department 406
of administrative services, in accordance with division (H) of 407
this section, another political subdivision, or an appropriate 408
public or private entity to provide competitive testing services 409
or other appropriate services. 410

(3) After the county personnel department of a county has 411
been established as described in division (G) (2) of this 412
section, any elected official, board, agency, or other 413
appointing authority of that county, upon written notification 414
to the county personnel department, may elect to use the 415
services and facilities of the county personnel department. Upon 416
receipt of the notification by the county personnel department, 417
the county personnel department shall exercise the powers, 418
duties, and functions as described in division (G) (2) of this 419
section with respect to the employees of that elected official, 420
board, agency, or other appointing authority. 421

(4) Each board of county commissioners, by a resolution 422
adopted by a majority of its members, may disband the county 423
personnel department. 424

(5) Any elected official, board, agency, or appointing 425
authority of a county may end its involvement with a county 426
personnel department upon actual receipt by the department of a 427
certified copy of the notification that contains the decision to 428
no longer participate. 429

(6) A county personnel department, in carrying out its 430
duties, shall adhere to merit system principles with regard to 431
employees of county departments of job and family services, 432
child support enforcement agencies, and public child welfare 433
agencies so that there is no threatened loss of federal funding 434

for these agencies, and the county is financially liable to the 435
state for any loss of federal funds due to the action or 436
inaction of the county personnel department. 437

(H) County agencies may contract with the department of 438
administrative services for any human resources services, 439
including, but not limited to, establishment and modification of 440
job classification plans, competitive testing services, and 441
periodic audits and reviews of the county's uniform application 442
of the powers, duties, and functions specified in sections 443
124.01 to 124.64 and Chapter 325. of the Revised Code with 444
regard to employees in the service of the county. Nothing in 445
this division modifies the powers and duties of the state 446
personnel board of review with respect to employees in the 447
service of the county. Nothing in this division limits the right 448
of any employee who possesses the right of appeal to the state 449
personnel board of review to continue to possess that right of 450
appeal. 451

(I) The director of administrative services shall 452
establish the rate and method of compensation for all employees 453
who are paid directly by warrant of the director of budget and 454
management and who are serving in positions that the director of 455
administrative services has determined impracticable to include 456
in the state job classification plan. This division does not 457
apply to elected officials, legislative employees, employees of 458
the legislative service commission, employees who are in the 459
unclassified civil service and exempt from collective bargaining 460
coverage in the office of the secretary of state, auditor of 461
state, treasurer of state, and attorney general, employees of 462
the courts, employees of the bureau of workers' compensation 463
whose compensation the administrator of workers' compensation 464
establishes under division (B) of section 4121.121 of the 465

Revised Code, or employees of an appointing authority authorized 466
by law to fix the compensation of those employees. 467

(J) The director of administrative services shall set the 468
rate of compensation for all intermittent, seasonal, temporary, 469
emergency, and casual employees in the service of the state who 470
are not considered public employees under section 4117.01 of the 471
Revised Code. Those employees are not entitled to receive 472
employee benefits, unless otherwise required by law. This rate 473
of compensation shall be equitable in terms of the rate of 474
employees serving in the same or similar classifications. This 475
division does not apply to elected officials, legislative 476
employees, employees of the legislative service commission, 477
employees who are in the unclassified civil service and exempt 478
from collective bargaining coverage in the office of the 479
secretary of state, auditor of state, treasurer of state, and 480
attorney general, employees of the courts, employees of the 481
bureau of workers' compensation whose compensation the 482
administrator establishes under division (B) of section 4121.121 483
of the Revised Code, or employees of an appointing authority 484
authorized by law to fix the compensation of those employees. 485

Sec. 124.15. (A) Board and commission members appointed 486
prior to July 1, 1991, shall be paid a salary or wage in 487
accordance with the following schedules of rates: 488

Schedule B 489

Pay Ranges and Step Values 490

Range	Step 1	Step 2	Step 3	Step 4
23 Hourly	5.72	5.91	6.10	6.31
Annually	11897.60	12292.80	12688.00	13124.80
	Step 5	Step 6		
Hourly	6.52	6.75		

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	Annually	13561.60	14040.00			496
		Step 1	Step 2	Step 3	Step 4	497
24	Hourly	6.00	6.20	6.41	6.63	498
	Annually	12480.00	12896.00	13332.80	13790.40	499
		Step 5	Step 6			500
	Hourly	6.87	7.10			501
	Annually	14289.60	14768.00			502
		Step 1	Step 2	Step 3	Step 4	503
25	Hourly	6.31	6.52	6.75	6.99	504
	Annually	13124.80	13561.60	14040.00	14539.20	505
		Step 5	Step 6			506
	Hourly	7.23	7.41			507
	Annually	15038.40	15412.80			508
		Step 1	Step 2	Step 3	Step 4	509
26	Hourly	6.63	6.87	7.10	7.32	510
	Annually	13790.40	14289.60	14768.00	15225.60	511
		Step 5	Step 6			512
	Hourly	7.53	7.77			513
	Annually	15662.40	16161.60			514
		Step 1	Step 2	Step 3	Step 4	515
27	Hourly	6.99	7.23	7.41	7.64	516
	Annually	14534.20	15038.40	15412.80	15891.20	517
		Step 5	Step 6	Step 7		518
	Hourly	7.88	8.15	8.46		519
	Annually	16390.40	16952.00	17596.80		520
		Step 1	Step 2	Step 3	Step 4	521
28	Hourly	7.41	7.64	7.88	8.15	522
	Annually	15412.80	15891.20	16390.40	16952.00	523
		Step 5	Step 6	Step 7		524
	Hourly	8.46	8.79	9.15		525
	Annually	17596.80	18283.20	19032.00		526
		Step 1	Step 2	Step 3	Step 4	527

29	Hourly	7.88	8.15	8.46	8.79	528
	Annually	16390.40	16952.00	17596.80	18283.20	529
		Step 5	Step 6	Step 7		530
	Hourly	9.15	9.58	10.01		531
	Annually	19032.00	19926.40	20820.80		532
		Step 1	Step 2	Step 3	Step 4	533
30	Hourly	8.46	8.79	9.15	9.58	534
	Annually	17596.80	18283.20	19032.00	19926.40	535
		Step 5	Step 6	Step 7		536
	Hourly	10.01	10.46	10.99		537
	Annually	20820.80	21756.80	22859.20		538
		Step 1	Step 2	Step 3	Step 4	539
31	Hourly	9.15	9.58	10.01	10.46	540
	Annually	19032.00	19962.40	20820.80	21756.80	541
		Step 5	Step 6	Step 7		542
	Hourly	10.99	11.52	12.09		543
	Annually	22859.20	23961.60	25147.20		544
		Step 1	Step 2	Step 3	Step 4	545
32	Hourly	10.01	10.46	10.99	11.52	546
	Annually	20820.80	21756.80	22859.20	23961.60	547
		Step 5	Step 6	Step 7	Step 8	548
	Hourly	12.09	12.68	13.29	13.94	549
	Annually	25147.20	26374.40	27643.20	28995.20	550
		Step 1	Step 2	Step 3	Step 4	551
33	Hourly	10.99	11.52	12.09	12.68	552
	Annually	22859.20	23961.60	25147.20	26374.40	553
		Step 5	Step 6	Step 7	Step 8	554
	Hourly	13.29	13.94	14.63	15.35	555
	Annually	27643.20	28995.20	30430.40	31928.00	556
		Step 1	Step 2	Step 3	Step 4	557
34	Hourly	12.09	12.68	13.29	13.94	558
	Annually	25147.20	26374.40	27643.20	28995.20	559

		Step 5	Step 6	Step 7	Step 8	560
	Hourly	14.63	15.35	16.11	16.91	561
	Annually	30430.40	31928.00	33508.80	35172.80	562
		Step 1	Step 2	Step 3	Step 4	563
35	Hourly	13.29	13.94	14.63	15.35	564
	Annually	27643.20	28995.20	30430.40	31928.00	565
		Step 5	Step 6	Step 7	Step 8	566
	Hourly	16.11	16.91	17.73	18.62	567
	Annually	33508.80	35172.80	36878.40	38729.60	568
		Step 1	Step 2	Step 3	Step 4	569
36	Hourly	14.63	15.35	16.11	16.91	570
	Annually	30430.40	31928.00	33508.80	35172.80	571
		Step 5	Step 6	Step 7	Step 8	572
	Hourly	17.73	18.62	19.54	20.51	573
	Annually	36878.40	38729.60	40643.20	42660.80	574

Schedule C 575

Pay Range and Values 576

Range	Minimum	Maximum	577
41 Hourly	10.44	15.72	578
Annually	21715.20	32697.60	579
42 Hourly	11.51	17.35	580
Annually	23940.80	36088.00	581
43 Hourly	12.68	19.12	582
Annually	26374.40	39769.60	583
44 Hourly	13.99	20.87	584
Annually	29099.20	43409.60	585
45 Hourly	15.44	22.80	586
Annually	32115.20	47424.00	587
46 Hourly	17.01	24.90	588
Annually	35380.80	51792.00	589
47 Hourly	18.75	27.18	590

Annually	39000.00	56534.40	591
48 Hourly	20.67	29.69	592
Annually	42993.60	61755.20	593
49 Hourly	22.80	32.06	594
Annually	47424.00	66684.80	595

(B) The pay schedule of all employees shall be on a 596
biweekly basis, with amounts computed on an hourly basis. 597

(C) Part-time employees shall be compensated on an hourly 598
basis for time worked, at the rates shown in division (A) of 599
this section or in section 124.152 of the Revised Code. 600

(D) The salary and wage rates in division (A) of this 601
section or in section 124.152 of the Revised Code represent base 602
rates of compensation and may be augmented by the provisions of 603
section 124.181 of the Revised Code. In those cases where 604
lodging, meals, laundry, or other personal services are 605
furnished an employee in the service of the state, the actual 606
costs or fair market value of the personal services shall be 607
paid by the employee in such amounts and manner as determined by 608
the director of administrative services and approved by the 609
director of budget and management, and those personal services 610
shall not be considered as a part of the employee's 611
compensation. An appointing authority that appoints employees in 612
the service of the state, with the approval of the director of 613
administrative services and the director of budget and 614
management, may establish payments to employees for uniforms, 615
tools, equipment, and other requirements of the department and 616
payments for the maintenance of them. 617

The director of administrative services may review 618
collective bargaining agreements entered into under Chapter 619
4117. of the Revised Code that cover employees in the service of 620

the state and determine whether certain benefits or payments 621
provided to the employees covered by those agreements should 622
also be provided to employees in the service of the state who 623
are exempt from collective bargaining coverage and are paid in 624
accordance with section 124.152 of the Revised Code or are 625
listed in division (B) (2) or (4) of section 124.14 of the 626
Revised Code. On completing the review, the director of 627
administrative services, with the approval of the director of 628
budget and management, may provide to some or all of these 629
employees any payment or benefit, except for salary, contained 630
in such a collective bargaining agreement even if it is similar 631
to a payment or benefit already provided by law to some or all 632
of these employees. Any payment or benefit so provided shall not 633
exceed the highest level for that payment or benefit specified 634
in such a collective bargaining agreement. The director of 635
administrative services shall not provide, and the director of 636
budget and management shall not approve, any payment or benefit 637
to such an employee under this division unless the payment or 638
benefit is provided pursuant to a collective bargaining 639
agreement to a state employee who is in a position with similar 640
duties as, is supervised by, or is employed by the same 641
appointing authority as, the employee to whom the benefit or 642
payment is to be provided. 643

As used in this division, "payment or benefit already 644
provided by law" includes, but is not limited to, bereavement, 645
personal, vacation, administrative, and sick leave, disability 646
benefits, holiday pay, and pay supplements provided under the 647
Revised Code, but does not include wages or salary. 648

(E) New employees paid in accordance with schedule B of 649
division (A) of this section or schedule E-1 of section 124.152 650
of the Revised Code shall be employed at the minimum rate 651

established for the range unless otherwise provided. Employees 652
with qualifications that are beyond the minimum normally 653
required for the position and that are determined by the 654
director to be exceptional may be employed in, or may be 655
transferred or promoted to, a position at an advanced step of 656
the range. Further, in time of a serious labor market condition 657
when it is relatively impossible to recruit employees at the 658
minimum rate for a particular classification, the entrance rate 659
may be set at an advanced step in the range by the director of 660
administrative services. This rate may be limited to 661
geographical regions of the state. Appointments made to an 662
advanced step under the provision regarding exceptional 663
qualifications shall not affect the step assignment of employees 664
already serving. However, anytime the hiring rate of an entire 665
classification is advanced to a higher step, all incumbents of 666
that classification being paid at a step lower than that being 667
used for hiring, shall be advanced beginning at the start of the 668
first pay period thereafter to the new hiring rate, and any time 669
accrued at the lower step will be used to calculate advancement 670
to a succeeding step. If the hiring rate of a classification is 671
increased for only a geographical region of the state, only 672
incumbents who work in that geographical region shall be 673
advanced to a higher step. When an employee in the unclassified 674
service changes from one state position to another or is 675
appointed to a position in the classified service, or if an 676
employee in the classified service is appointed to a position in 677
the unclassified service, the employee's salary or wage in the 678
new position shall be determined in the same manner as if the 679
employee were an employee in the classified service. When an 680
employee in the unclassified service who is not eligible for 681
step increases is appointed to a classification in the 682
classified service under which step increases are provided, 683

future step increases shall be based on the date on which the
employee last received a pay increase. If the employee has not
received an increase during the previous year, the date of the
appointment to the classified service shall be used to determine
the employee's annual step advancement eligibility date. In
reassigning any employee to a classification resulting in a pay
range increase or to a new pay range as a result of a promotion,
an increase pay range adjustment, or other classification change
resulting in a pay range increase, the director shall assign
such employee to the step in the new pay range that will provide
an increase of approximately four per cent if the new pay range
can accommodate the increase. When an employee is being assigned
to a classification or new pay range as the result of a class
plan change, if the employee has completed a probationary
period, the employee shall be placed in a step no lower than
step two of the new pay range. If the employee has not completed
a probationary period, the employee may be placed in step one of
the new pay range. Such new salary or wage shall become
effective on such date as the director determines.

(F) If employment conditions and the urgency of the work
require such action, the director of administrative services
may, upon the application of a department head, authorize
payment at any rate established within the range for the class
of work, for work of a casual or intermittent nature or on a
project basis. Payment at such rates shall not be made to the
same individual for more than three calendar months in any one
calendar year. Any such action shall be subject to the approval
of the director of budget and management as to the availability
of funds. This section and sections 124.14 and 124.152 of the
Revised Code do not repeal any authority of any department or
public official to contract with or fix the compensation of

professional persons who may be employed temporarily for work of 715
a casual nature or for work on a project basis. 716

(G) (1) Except as provided in ~~divisions~~ division (G) (2) and ~~(3)~~ 717
~~(3)~~ of this section, each state employee paid in accordance with 718
schedule B of this section or schedule E-1 of section 124.152 of 719
the Revised Code shall be eligible for advancement to succeeding 720
steps in the range for the employee's class or grade according 721
to the schedule established in this division. Beginning on the 722
first day of the pay period within which the employee completes 723
the prescribed probationary period in the employee's 724
classification with the state, each employee shall receive an 725
automatic salary adjustment equivalent to the next higher step 726
within the pay range for the employee's class or grade. 727

Except as provided in ~~divisions~~ division (G) (2) and ~~(3)~~ of 728
this section, each employee paid in accordance with schedule E-1 729
of section 124.152 of the Revised Code shall be eligible to 730
advance to the next higher step until the employee reaches the 731
top step in the range for the employee's class or grade, if the 732
employee has maintained satisfactory performance in accordance 733
with criteria established by the employee's appointing 734
authority. Those step advancements shall not occur more 735
frequently than once in any twelve-month period. 736

When an employee is promoted, the step entry date shall be 737
set to account for a probationary period. When an employee is 738
reassigned to a higher pay range, the step entry date shall be 739
set to allow an employee who is not at the highest step of the 740
range to receive a step advancement one year from the 741
reassignment date. Step advancement shall not be affected by 742
demotion. A promoted employee shall advance to the next higher 743
step of the pay range on the first day of the pay period in 744

which the required probationary period is completed. Step 745
advancement shall become effective at the beginning of the pay 746
period within which the employee attains the necessary length of 747
service. Time spent on authorized leave of absence shall be 748
counted for this purpose. 749

If determined to be in the best interest of the state 750
service, the director of administrative services may, either 751
statewide or in selected agencies, adjust the dates on which 752
annual step advancements are received by employees paid in 753
accordance with schedule E-1 of section 124.152 of the Revised 754
Code. 755

~~(2) (a) There shall be a moratorium on annual step 756
advancements under division (G) (1) of this section beginning 757
June 21, 2009, through June 20, 2011. Step advancements shall 758
resume with the pay period beginning June 21, 2011. Upon the 759
resumption of step advancements, there shall be no retroactive 760
step advancements for the period the moratorium was in effect. 761
The moratorium shall not affect an employee's performance 762
evaluation schedule. 763~~

~~An employee who begins a probationary period before June 764
21, 2009, shall advance to the next step in the employee's pay 765
range at the end of probation, and then become subject to the 766
moratorium. An employee who is hired, promoted, or reassigned to 767
a higher pay range between June 21, 2009, through June 20, 2011, 768
shall not advance to the next step in the employee's pay range 769
until the next anniversary of the employee's date of hire, 770
promotion, or reassignment that occurs on or after June 21, 771
2011. 772~~

~~(b) The moratorium under division (G) (2) (a) of this 773
section shall apply to the employees of the secretary of state, 774~~

~~the auditor of state, the treasurer of state, and the attorney
general, who are subject to this section unless the secretary of
state, the auditor of state, the treasurer of state, or the
attorney general decides to exempt the office's employees from
the moratorium and so notifies the director of administrative
services in writing on or before July 1, 2009.~~

(3) Employees in intermittent positions shall be employed
at the minimum rate established for the pay range for their
classification and are not eligible for step advancements.

(H) Employees in appointive managerial or professional
positions paid in accordance with schedule C of this section or
schedule E-2 of section 124.152 of the Revised Code may be
appointed at any rate within the appropriate pay range. This
rate of pay may be adjusted higher or lower within the
respective pay range at any time the appointing authority so
desires as long as the adjustment is based on the employee's
ability to successfully administer those duties assigned to the
employee. Salary adjustments shall not be made more frequently
than once in any six-month period under this provision to
incumbents holding the same position and classification.

(I) When an employee is assigned to duty outside this
state, the employee may be compensated, upon request of the
department head and with the approval of the director of
administrative services, at a rate not to exceed fifty per cent
in excess of the employee's current base rate for the period of
time spent on that duty.

(J) Unless compensation for members of a board or
commission is otherwise specifically provided by law, the
director of administrative services shall establish the rate and
method of payment for members of boards and commissions pursuant

to the pay schedules listed in section 124.152 of the Revised 805
Code. 806

(K) Regular full-time employees in positions assigned to 807
classes within the instruction and education administration 808
series under the job classification plans of the director of 809
administrative services, except certificated employees on the 810
instructional staff of the state school for the blind or the 811
state school for the deaf, whose positions are scheduled to work 812
on the basis of an academic year rather than a full calendar 813
year, shall be paid according to the pay range assigned by the 814
applicable job classification plan, but only during those pay 815
periods included in the academic year of the school where the 816
employee is located. 817

(1) Part-time or substitute teachers or those whose period 818
of employment is other than the full academic year shall be 819
compensated for the actual time worked at the rate established 820
by this section. 821

(2) Employees governed by this division are exempt from 822
sections 124.13 and 124.19 of the Revised Code. 823

(3) Length of service for the purpose of determining 824
eligibility for step advancements as provided by division (G) of 825
this section and for the purpose of determining eligibility for 826
longevity pay supplements as provided by division (E) of section 827
124.181 of the Revised Code shall be computed on the basis of 828
one full year of service for the completion of each academic 829
year. 830

(L) The superintendent of the state school for the deaf 831
and the superintendent of the state school for the blind shall, 832
subject to the approval of the superintendent of public 833

instruction, carry out both of the following: 834

(1) Annually, between the first day of April and the last 835
day of June, establish for the ensuing fiscal year a schedule of 836
hourly rates for the compensation of each certificated employee 837
on the instructional staff of that superintendent's respective 838
school constructed as follows: 839

(a) Determine for each level of training, experience, and 840
other professional qualification for which an hourly rate is set 841
forth in the current schedule, the per cent that rate is of the 842
rate set forth in such schedule for a teacher with a bachelor's 843
degree and no experience. If there is more than one such rate 844
for such a teacher, the lowest rate shall be used to make the 845
computation. 846

(b) Determine which six city, local, and exempted village 847
school districts with territory in Franklin county have in 848
effect on, or have adopted by, the first day of April for the 849
school year that begins on the ensuing first day of July, 850
teacher salary schedules with the highest minimum salaries for a 851
teacher with a bachelor's degree and no experience; 852

(c) Divide the sum of such six highest minimum salaries by 853
ten thousand five hundred sixty; 854

(d) Multiply each per cent determined in division (L) (1) 855
(a) of this section by the quotient obtained in division (L) (1) 856
(c) of this section; 857

(e) One hundred five per cent of each product thus 858
obtained shall be the hourly rate for the corresponding level of 859
training, experience, or other professional qualification in the 860
schedule for the ensuing fiscal year. 861

(2) Annually, assign each certificated employee on the 862

instructional staff of the superintendent's respective school to 863
an hourly rate on the schedule that is commensurate with the 864
employee's training, experience, and other professional 865
qualifications. 866

If an employee is employed on the basis of an academic 867
year, the employee's annual salary shall be calculated by 868
multiplying the employee's assigned hourly rate times one 869
thousand seven hundred sixty. If an employee is not employed on 870
the basis of an academic year, the employee's annual salary 871
shall be calculated in accordance with the following formula: 872

(a) Multiply the number of days the employee is required 873
to work pursuant to the employee's contract by eight; 874

(b) Multiply the product of division (L) (2) (a) of this 875
section by the employee's assigned hourly rate. 876

Each employee shall be paid an annual salary in biweekly 877
installments. The amount of each installment shall be calculated 878
by dividing the employee's annual salary by the number of 879
biweekly installments to be paid during the year. 880

Sections 124.13 and 124.19 of the Revised Code do not 881
apply to an employee who is paid under this division. 882

As used in this division, "academic year" means the number 883
of days in each school year that the schools are required to be 884
open for instruction with pupils in attendance. Upon completing 885
an academic year, an employee paid under this division shall be 886
deemed to have completed one year of service. An employee paid 887
under this division is eligible to receive a pay supplement 888
under division (L) (1), (2), or (3) of section 124.181 of the 889
Revised Code for which the employee qualifies, but is not 890
eligible to receive a pay supplement under division (L) (4) or 891

(5) of that section. An employee paid under this division is 892
eligible to receive a pay supplement under division (L) (6) of 893
section 124.181 of the Revised Code for which the employee 894
qualifies, except that the supplement is not limited to a 895
maximum of five per cent of the employee's regular base salary 896
in a calendar year. 897

(M) Division (A) of this section does not apply to "exempt 898
employees," as defined in section 124.152 of the Revised Code, 899
who are paid under that section. 900

Notwithstanding any other provisions of this chapter, when 901
an employee who is a member of an employee organization as 902
defined in section 4117.01 of the Revised Code transfers between 903
bargaining units or transfers out of or into a bargaining unit, 904
the director of administrative services shall establish the 905
employee's compensation and adjust the maximum leave accrual 906
schedule as the director deems equitable. 907

Sec. 3345.31. The boards of trustees of a state 908
university, the board of trustees of the northeast Ohio medical 909
university, the board of trustees of a technical college or 910
community college district, and the board of control of the Ohio 911
agricultural research and development center may establish 912
compensation plans, including schedules of hourly rates, for the 913
compensation of all employees and may establish rules or 914
policies for the administration of their respective compensation 915
plans. 916

The provisions of this section do not apply to employees 917
for whom the state employment relations board establishes 918
appropriate bargaining units pursuant to section 4117.06 of the 919
Revised Code and who are members of the exclusive 920
representative, as defined in section 4117.01 of the Revised 921

Code, selected by the members of such a bargaining unit. 922

Sec. 4117.03. (A) Public employees have the right to: 923

(1) Form, join, assist, or participate in, or refrain from 924
forming, joining, assisting, or participating in, except as 925
otherwise provided in ~~Chapter 4117. of the Revised Code~~ this 926
chapter, any employee organization of their own choosing; 927

(2) Engage in or refrain from engaging in other concerted 928
activities for the purpose of collective bargaining or other 929
mutual aid and protection; 930

(3) Representation by an employee organization; 931

(4) Bargain collectively with their public employers to 932
determine wages, hours, terms and other conditions of employment 933
and the continuation, modification, or deletion of an existing 934
provision of a collective bargaining agreement, and enter into 935
collective bargaining agreements; 936

(5) Present grievances and have them adjusted, without the 937
intervention of the bargaining representative, as long as the 938
adjustment is not inconsistent with the terms of the collective 939
bargaining agreement then in effect and as long as the 940
bargaining representatives have the opportunity to be present at 941
the adjustment. 942

(B) Persons on active duty or acting in any capacity as 943
members of the organized militia do not have collective 944
bargaining rights. 945

(C) Except as provided in division (D) of this section, 946
nothing in ~~Chapter 4117. of the Revised Code~~ this chapter 947
prohibits public employers from electing to engage in collective 948
bargaining, to meet and confer, to hold discussions, or to 949

engage in any other form of collective negotiations with public 950
employees who are not subject to ~~Chapter 4117. of the Revised~~ 951
~~Code~~ this chapter pursuant to division (C) of section 4117.01 of 952
the Revised Code. 953

(D) A public employer shall not engage in collective 954
bargaining or other forms of collective negotiations with the 955
employees of county boards of elections referred to in division 956
(C) (12) of section 4117.01 of the Revised Code. 957

(E) Employees of public schools may bargain collectively 958
for health care benefits. 959

Sec. 4117.04. (A) Public employers shall extend to an 960
exclusive representative designated under section 4117.05 of the 961
Revised Code, the right to represent exclusively the employees 962
in the appropriate bargaining unit and the right to unchallenged 963
and exclusive representation for a period of not less than 964
twelve months following the date of certification and 965
thereafter, if the public employer and the employee organization 966
enter into an agreement, for a period of not more than three 967
years from the date of signing the agreement. For ~~the~~ purposes 968
of this section, extensions of agreements shall not be construed 969
to affect the expiration date of the original agreement. Nothing 970
in this section shall be construed to require or permit an 971
exclusive representative to represent a public employee who is 972
not a member of the exclusive representative. 973

(B) A public employer shall bargain collectively with an 974
exclusive representative designated under section 4117.05 of the 975
Revised Code for purposes of Chapter 4117. of the Revised Code. 976

When the state employment relations board notifies a 977
public employer that it has certified an employee organization 978

as exclusive representative for a unit of its employees, the 979
public employer shall designate an employer representative and 980
promptly notify the board and the employee organization of ~~his~~ 981
the employer representative's identity and address. On 982
certification, the employee organization shall designate an 983
employee representative and promptly notify the board and the 984
public employer of ~~his~~ the employee representative's identity 985
and address. The board or any party shall address to the 986
appropriate designated representative all communications 987
concerned with collective relationships under Chapter 4117. of 988
the Revised Code. In the case of municipal corporations, 989
counties, school districts, educational service centers, 990
villages, and townships, the designation of the employer 991
representative is as provided in division (C) of section 4117.10 992
of the Revised Code. The designated representative of a party 993
may sign agreements resulting from collective bargaining on 994
behalf of ~~his~~ the representative's designator; but the 995
agreements are subject to the procedures set forth in Chapter 996
4117. of the Revised Code. 997

Sec. 4117.05. (A) ~~An~~ For the purpose of collective 998
bargaining, an employee organization becomes the exclusive 999
representative of all the public employees in an appropriate 1000
unit ~~for the purposes of collective bargaining who are members~~ 1001
of the employee organization by either: 1002

(1) Being certified by the state employment relations 1003
board when a majority of the voting employees in the unit select 1004
the employee organization as their representative in a board- 1005
conducted election under section 4117.07 of the Revised Code; 1006

(2) Filing a request with a public employer with a copy to 1007
the state employment relations board for recognition as an 1008

exclusive representative. In the request for recognition, the
employee organization shall describe the bargaining unit, shall
allege that a majority of the employees in the bargaining unit
wish to be represented by the employee organization, and shall
support the request with substantial evidence based on, and in
accordance with, rules prescribed by the board demonstrating
that a majority of the employees in the bargaining unit wish to
be represented by the employee organization. Immediately upon
receipt of a request, the public employer shall either request
an election under division (A) (2) of section 4117.07 of the
Revised Code, or take the following action:

(a) Post notice in each facility at which employees in the
proposed unit are employed, setting forth the description of the
bargaining unit, the name of the employee organization
requesting recognition, and the date of the request for
recognition, and advising employees that objections to
certification must be filed with the state employment relations
board not later than the twenty-first day following the date of
the request for recognition;

(b) Immediately notify the state employment relations
board of the request for recognition.

The state employment relations board shall certify the
employee organization filing the request for recognition on the
twenty-second day following the filing of the request for
recognition, unless by the twenty-first day following the filing
of the request for recognition it receives;

(i) A petition for an election from the public employer
pursuant to division (A) (2) of section 4117.07 of the Revised
Code;

(ii) Substantial evidence based on, and in accordance 1038
with, rules prescribed by the board demonstrating that a 1039
majority of the employees in the described bargaining unit do 1040
not wish to be represented by the employee organization filing 1041
the request for recognition; 1042

(iii) Substantial evidence based on, and in accordance 1043
with, rules prescribed by the board from another employee 1044
organization demonstrating that at least ten per cent of the 1045
employees in the described bargaining unit wish to be 1046
represented by such other employee organization; or 1047

(iv) Substantial evidence based on, and in accordance 1048
with, rules prescribed by the board indicating that the proposed 1049
unit is not an appropriate unit pursuant to section 4117.06 of 1050
the Revised Code. 1051

(B) Nothing in this section shall be construed to permit a 1052
public employer to recognize, or the state employment relations 1053
board to certify, an employee organization as an exclusive 1054
representative under Chapter 4117. of the Revised Code if there 1055
is in effect a lawful written agreement, contract, or memorandum 1056
of understanding between the public employer and another 1057
employee organization which, ~~on the effective date of this~~ 1058
~~section April 1, 1984~~, has been recognized by a public employer 1059
as the exclusive representative of the employees in a unit or 1060
which by tradition, custom, practice, election, or negotiation 1061
has been the only employee organization representing all 1062
employees in the unit; this restriction does not apply to that 1063
period of time covered by any agreement which exceeds three 1064
years. For the purposes of this section, extensions of agreement 1065
do not affect the expiration of the original agreement. 1066

Sec. 4117.09. (A) The parties to any collective bargaining 1067

agreement shall reduce the agreement to writing and both execute 1068
it. 1069

(B) The agreement shall contain a provision that: 1070

(1) Provides for a grievance procedure which may culminate 1071
with final and binding arbitration of unresolved grievances, and 1072
disputed interpretations of agreements, and which is valid and 1073
enforceable under its terms when entered into in accordance with 1074
this chapter. No publication thereof is required to make it 1075
effective. A party to the agreement may bring suits for 1076
violation of agreements or the enforcement of an award by an 1077
arbitrator in the court of common pleas of any county wherein a 1078
party resides or transacts business. 1079

(2) Authorizes the public employer to deduct the periodic 1080
dues, initiation fees, and assessments of members of the 1081
exclusive representative upon presentation of a written 1082
deduction authorization by the employee. 1083

~~(C) The agreement may contain a provision that requires as~~ 1084
~~a condition of employment, on or after a mutually agreed upon~~ 1085
~~probationary period or sixty days following the beginning of~~ 1086
~~employment, whichever is less, or the effective date of a~~ 1087
~~collective bargaining agreement, whichever is later, that the~~ 1088
~~employees in the unit who are not members of the employee~~ 1089
~~organization pay to the employee organization a fair share fee.~~ 1090
~~The arrangement does not require any employee to become a member~~ 1091
~~of the employee organization, nor shall fair share fees exceed~~ 1092
~~dues paid by members of the employee organization who are in the~~ 1093
~~same bargaining unit. Any public employee organization~~ 1094
~~representing public employees pursuant to this chapter shall~~ 1095
~~prescribe an internal procedure to determine a rebate, if any,~~ 1096
~~for nonmembers which conforms to federal law, provided a~~ 1097

~~nonmember makes a timely demand on the employee organization.~~ 1098
~~Absent arbitrary and capricious action, such determination is~~ 1099
~~conclusive on the parties except that a challenge to the~~ 1100
~~determination may be filed with the state employment relations~~ 1101
~~board within thirty days of the determination date specifying~~ 1102
~~the arbitrary or capricious nature of the determination and the~~ 1103
~~board shall review the rebate determination and decide whether~~ 1104
~~it was arbitrary or capricious. The deduction of a fair share~~ 1105
~~fee by the public employer from the payroll check of the~~ 1106
~~employee and its payment to the employee organization is~~ 1107
~~automatic and does not require the written authorization of the~~ 1108
~~employee.~~ 1109

~~The internal rebate procedure shall provide for a rebate~~ 1110
~~of expenditures in support of partisan politics or ideological~~ 1111
~~causes not germane to the work of employee organizations in the~~ 1112
~~realm of collective bargaining.~~ 1113

~~Any public employee who is a member of and adheres to~~ 1114
~~established and traditional tenets or teachings of a bona fide~~ 1115
~~religion or religious body which has historically held~~ 1116
~~conscientious objections to joining or financially supporting an~~ 1117
~~employee organization and which is exempt from taxation under~~ 1118
~~the provisions of the Internal Revenue Code shall not be~~ 1119
~~required to join or financially support any employee~~ 1120
~~organization as a condition of employment. Upon submission of~~ 1121
~~proper proof of religious conviction to the board, the board~~ 1122
~~shall declare the employee exempt from becoming a member of or~~ 1123
~~financially supporting an employee organization. The employee~~ 1124
~~shall be required, in lieu of the fair share fee, to pay an~~ 1125
~~amount of money equal to the fair share fee to a nonreligious~~ 1126
~~charitable fund exempt from taxation under section 501(c)(3) of~~ 1127
~~the Internal Revenue Code mutually agreed upon by the employee~~ 1128

~~and the representative of the employee organization to which the~~ 1129
~~employee would otherwise be required to pay the fair share fee.~~ 1130
~~The employee shall furnish to the employee organization written~~ 1131
~~receipts evidencing such payment, and failure to make the~~ 1132
~~payment or furnish the receipts shall subject the employee to~~ 1133
~~the same sanctions as would nonpayment of dues under the~~ 1134
~~applicable collective bargaining agreement.~~ 1135

No public employer shall agree to a provision requiring 1136
that a public employee become a member of, or pay dues or fees 1137
to, an employee organization as a condition for securing or 1138
retaining employment. 1139

Nothing in this section prohibits a public employee who is 1140
not a member of an employee organization from making a voluntary 1141
contribution to the employee organization. 1142

(D) As used in this division, "teacher" means any employee 1143
of a school district certified to teach in the public schools of 1144
this state. 1145

The agreement may contain a provision that provides for a 1146
peer review plan under which teachers in a bargaining unit or 1147
representatives of an employee organization representing 1148
teachers may, for other teachers of the same bargaining unit 1149
covered by the agreement or teachers whom the employee 1150
organization represents, participate in assisting, instructing, 1151
reviewing, evaluating, or appraising and make recommendations or 1152
participate in decisions with respect to the retention, 1153
discharge, renewal, or nonrenewal of, the teachers covered by a 1154
peer review plan. 1155

The participation of teachers or their employee 1156
organization representative in a peer review plan permitted 1157

under this division shall not be construed as an unfair labor 1158
practice under this chapter or as a violation of any other 1159
provision of law or rule adopted pursuant thereto. 1160

(E) No agreement shall contain an expiration date that is 1161
later than three years from the date of execution. The parties 1162
may extend any agreement, but the extensions do not affect the 1163
expiration date of the original agreement. 1164

Sec. 4117.10. (A) An agreement between a public employer 1165
and an exclusive representative entered into pursuant to this 1166
chapter governs the wages, hours, and terms and conditions of 1167
public employment for public employees who are members of the 1168
exclusive representative and who are covered by the agreement. 1169
If the agreement provides for a final and binding arbitration of 1170
grievances, public employers, employees who are members of the 1171
employee organization, and employee organizations are subject 1172
solely to that grievance procedure and the state personnel board 1173
of review or civil service commissions have no jurisdiction to 1174
receive and determine any appeals relating to matters that were 1175
the subject of a final and binding grievance procedure. Where no 1176
agreement exists or where an agreement makes no specification 1177
about a matter, the public employer and public employees are 1178
subject to all applicable state or local laws or ordinances 1179
pertaining to the wages, hours, and terms and conditions of 1180
employment for public employees. All of the following prevail 1181
over conflicting provisions of agreements between employee 1182
organizations and public employers: 1183

(1) Laws pertaining to any of the following subjects: 1184

(a) Civil rights; 1185

(b) Affirmative action; 1186

(c) Unemployment compensation;	1187
(d) Workers' compensation;	1188
(e) The retirement of public employees;	1189
(f) Residency requirements;	1190
(g) The minimum educational requirements contained in the Revised Code pertaining to public education including the requirement of a certificate by the fiscal officer of a school district pursuant to section 5705.41 of the Revised Code;	1191 1192 1193 1194
(h) The provisions of division (A) of section 124.34 of the Revised Code governing the disciplining of officers and employees who have been convicted of a felony;	1195 1196 1197
(i) The minimum standards promulgated by the state board of education pursuant to division (D) of section 3301.07 of the Revised Code.	1198 1199 1200
(2) The law pertaining to the leave of absence and compensation provided under section 5923.05 of the Revised Code, if the terms of the agreement contain benefits which are less than those contained in that section or the agreement contains no such terms and the public authority is the state or any agency, authority, commission, or board of the state or if the public authority is another entity listed in division (B) of section 4117.01 of the Revised Code that elects to provide leave of absence and compensation as provided in section 5923.05 of the Revised Code;	1201 1202 1203 1204 1205 1206 1207 1208 1209 1210
(3) The law pertaining to the leave established under section 5906.02 of the Revised Code, if the terms of the agreement contain benefits that are less than those contained in section 5906.02 of the Revised Code;	1211 1212 1213 1214

(4) The law pertaining to excess benefits prohibited under 1215
section 3345.311 of the Revised Code with respect to an 1216
agreement between an employee organization and a public employer 1217
entered into on or after ~~the effective date of this amendment~~ 1218
September 29, 2015. 1219

Except for sections 306.08, 306.12, 306.35, and 4981.22 of 1220
the Revised Code and arrangements entered into thereunder, and 1221
section 4981.21 of the Revised Code as necessary to comply with 1222
section 13(c) of the "Urban Mass Transportation Act of 1964," 87 1223
Stat. 295, 49 U.S.C.A. 1609(c), as amended, and arrangements 1224
entered into thereunder, this chapter prevails over any and all 1225
other conflicting laws, resolutions, provisions, present or 1226
future, except as otherwise specified in this chapter or as 1227
otherwise specified by the general assembly. Nothing in this 1228
section prohibits or shall be construed to invalidate the 1229
provisions of an agreement establishing supplemental workers' 1230
compensation or unemployment compensation benefits or exceeding 1231
minimum requirements contained in the Revised Code pertaining to 1232
public education or the minimum standards promulgated by the 1233
state board of education pursuant to division (D) of section 1234
3301.07 of the Revised Code. 1235

(B) The public employer shall submit a request for funds 1236
necessary to implement an agreement and for approval of any 1237
other matter requiring the approval of the appropriate 1238
legislative body to the legislative body within fourteen days of 1239
the date on which the parties finalize the agreement, unless 1240
otherwise specified, but if the appropriate legislative body is 1241
not in session at the time, then within fourteen days after it 1242
convenes. The legislative body must approve or reject the 1243
submission as a whole, and the submission is deemed approved if 1244
the legislative body fails to act within thirty days after the 1245

public employer submits the agreement. The parties may specify 1246
that those provisions of the agreement not requiring action by a 1247
legislative body are effective and operative in accordance with 1248
the terms of the agreement, provided there has been compliance 1249
with division (C) of this section. If the legislative body 1250
rejects the submission of the public employer, either party may 1251
reopen all or part of the entire agreement. 1252

As used in this section, "legislative body" includes the 1253
governing board of a municipal corporation, school district, 1254
college or university, village, township, or board of county 1255
commissioners or any other body that has authority to approve 1256
the budget of their public jurisdiction and, with regard to the 1257
state, "legislative body" means the controlling board. 1258

(C) The chief executive officer, or the chief executive 1259
officer's representative, of each municipal corporation, the 1260
designated representative of the board of education of each 1261
school district, college or university, or any other body that 1262
has authority to approve the budget of their public 1263
jurisdiction, the designated representative of the board of 1264
county commissioners and of each elected officeholder of the 1265
county whose employees are covered by the collective 1266
negotiations, and the designated representative of the village 1267
or the board of township trustees of each township is 1268
responsible for negotiations in the collective bargaining 1269
process; except that the legislative body may accept or reject a 1270
proposed collective bargaining agreement. When the matters about 1271
which there is agreement are reduced to writing and approved by 1272
the employee organization and the legislative body, the 1273
agreement is binding upon the legislative body, the employer, 1274
and the employee organization and employees covered by the 1275
agreement. 1276

(D) There is hereby established an office of collective bargaining in the department of administrative services for the purpose of negotiating with and entering into written agreements between state agencies, departments, boards, and commissions and the exclusive representative on matters of wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Nothing in any provision of law to the contrary shall be interpreted as excluding the bureau of workers' compensation and the industrial commission from the preceding sentence. This office shall not negotiate on behalf of other statewide elected officials or boards of trustees of state institutions of higher education who shall be considered as separate public employers for the purposes of this chapter; however, the office may negotiate on behalf of these officials or trustees where authorized by the officials or trustees. The staff of the office of collective bargaining are in the unclassified service. The director of administrative services shall fix the compensation of the staff.

The office of collective bargaining shall:

(1) Assist the director in formulating management's philosophy for public collective bargaining as well as planning bargaining strategies;

(2) Conduct negotiations with the exclusive representatives of each employee organization;

(3) Coordinate the state's resources in all mediation, fact-finding, and arbitration cases as well as in all labor disputes;

(4) Conduct systematic reviews of collective bargaining

agreements for the purpose of contract negotiations; 1306

(5) Coordinate the systematic compilation of data by all 1307
agencies that is required for negotiating purposes; 1308

(6) Prepare and submit an annual report and other reports 1309
as requested to the governor and the general assembly on the 1310
implementation of this chapter and its impact upon state 1311
government. 1312

Sec. 4117.11. (A) It is an unfair labor practice for a 1313
public employer, its agents, or representatives to: 1314

(1) Interfere with, restrain, or coerce employees in the 1315
exercise of the rights guaranteed in ~~Chapter 4117. of the~~ 1316
~~Revised Code this chapter~~ or an employee organization in the 1317
selection of its representative for the purposes of collective 1318
bargaining or the adjustment of grievances; 1319

(2) Initiate, create, dominate, or interfere with the 1320
formation or administration of any employee organization, or 1321
contribute financial or other support to it; except that a 1322
public employer may permit employees to confer with it during 1323
working hours without loss of time or pay, permit the exclusive 1324
representative to use the facilities of the public employer for 1325
membership or other meetings, or permit the exclusive 1326
representative to use the internal mail system or other internal 1327
communications system; 1328

(3) Discriminate in regard to hire or tenure of employment 1329
or any term or condition of employment on the basis of the 1330
exercise of rights guaranteed by ~~Chapter 4117. of the Revised~~ 1331
~~Code this chapter. Nothing precludes any employer from making~~ 1332
~~and enforcing an agreement pursuant to division (C) of section~~ 1333
~~4117.09 of the Revised Code.~~ 1334

(4) Discharge or otherwise discriminate against an 1335
employee because ~~he~~ the employee has filed charges or given 1336
testimony under ~~Chapter 4117. of the Revised Code~~ this chapter; 1337

(5) Refuse to bargain collectively with the representative 1338
of ~~his~~ the employer's employees recognized as the exclusive 1339
representative or certified pursuant to ~~Chapter 4117. of the~~ 1340
~~Revised Code~~ this chapter; 1341

(6) Establish a pattern or practice of repeated failures 1342
to timely process grievances and requests for arbitration of 1343
grievances; 1344

(7) Lock out or otherwise prevent employees from 1345
performing their regularly assigned duties where an object 1346
thereof is to bring pressure on the employees or an employee 1347
organization to compromise or capitulate to the employer's terms 1348
regarding a labor relations dispute; 1349

(8) Cause or attempt to cause an employee organization, 1350
its agents, or representatives to violate division (B) of this 1351
section. 1352

(B) It is an unfair labor practice for an employee 1353
organization, its agents, or representatives, or public 1354
employees to: 1355

(1) Restrain or coerce employees in the exercise of the 1356
rights guaranteed in ~~Chapter 4117. of the Revised Code~~ this 1357
chapter. This division does not impair the right of an employee 1358
organization to prescribe its own rules with respect to the 1359
acquisition or retention of membership therein, or an employer 1360
in the selection of ~~his~~ the employer's representative for the 1361
purpose of collective ~~bargaining~~ bargaining or the adjustment of 1362
grievances. 1363

- (2) Cause or attempt to cause an employer to violate 1364
division (A) of this section; 1365
- (3) Refuse to bargain collectively with a public employer 1366
if the employee organization is recognized as the exclusive 1367
representative or certified as the exclusive representative of 1368
public employees in a bargaining unit; 1369
- (4) Call, institute, maintain, or conduct a boycott 1370
against any public employer, or picket any place of business of 1371
a public employer, on account of any jurisdictional work 1372
dispute; 1373
- (5) Induce or encourage any individual employed by any 1374
person to engage in a strike in violation of ~~Chapter 4117. of~~ 1375
~~the Revised Code this chapter~~ or refusal to handle goods or 1376
perform services; or threaten, coerce, or restrain any person 1377
where an object thereof is to force or require any public 1378
employee to cease dealing or doing business with any other 1379
person, or force or require a public employer to recognize for 1380
representation purposes an employee organization not certified 1381
by the state employment relations board; 1382
- (6) Fail to fairly represent all public employees in a 1383
bargaining unit who are members of the employee organization; 1384
- (7) Induce or encourage any individual in connection with 1385
a labor relations dispute to picket the residence or any place 1386
of private employment of any public official or representative 1387
of the public employer; 1388
- (8) Engage in any picketing, striking, or other concerted 1389
refusal to work without giving written notice to the public 1390
employer and to the state employment relations board not less 1391
than ten days prior to the action. The notice shall state the 1392

date and time that the action will commence and, once the notice
is given, the parties may extend it by the written agreement of
both.

(C) The determination by the board or any court that a
public officer or employee has committed any of the acts
prohibited by divisions (A) and (B) of this section shall not be
made the basis of any charge for the removal from office or
recall of the public officer or the suspension from or
termination of employment of or disciplinary acts against an
employee, nor shall the officer or employee be found subject to
any suit for damages based on such a determination; however
nothing in this division prevents any party to a collective
bargaining agreement from seeking enforcement or damages for a
violation thereof against the other party to the agreement.

(D) As to jurisdictional work disputes, the board shall
hear and determine the dispute unless, within ten days after
notice to the board by a party to the dispute that a dispute
exists, the parties to the dispute submit to the board
satisfactory evidence that they have adjusted, or agreed upon
the method for the voluntary adjustment of, the dispute.

Sec. 4121.03. (A) The governor shall appoint from among
the members of the industrial commission the chairperson of the
industrial commission. The chairperson shall serve as
chairperson at the pleasure of the governor. The chairperson is
the head of the commission and its chief executive officer.

(B) The chairperson shall appoint, after consultation with
other commission members and obtaining the approval of at least
one other commission member, an executive director of the
commission. The executive director shall serve at the pleasure
of the chairperson. The executive director, under the direction

of the chairperson, shall perform all of the following duties: 1423

(1) Act as chief administrative officer for the 1424
commission; 1425

(2) Ensure that all commission personnel follow the rules 1426
of the commission; 1427

(3) Ensure that all orders, awards, and determinations are 1428
properly heard and signed, prior to attesting to the documents; 1429

(4) Coordinate, to the fullest extent possible, commission 1430
activities with the bureau of workers' compensation activities; 1431

(5) Do all things necessary for the efficient and 1432
effective implementation of the duties of the commission. 1433

The responsibilities assigned to the executive director of 1434
the commission do not relieve the chairperson from final 1435
responsibility for the proper performance of the acts specified 1436
in this division. 1437

(C) The chairperson shall do all of the following: 1438

(1) Except as otherwise provided in this division, employ, 1439
promote, supervise, remove, and establish the compensation of 1440
all employees as needed in connection with the performance of 1441
the commission's duties under this chapter and Chapters 4123., 1442
4127., and 4131. of the Revised Code and may assign to them 1443
their duties to the extent necessary to achieve the most 1444
efficient performance of its functions, and to that end may 1445
establish, change, or abolish positions, and assign and reassign 1446
duties and responsibilities of every employee of the commission. 1447
The civil service status of any person employed by the 1448
commission prior to November 3, 1989, is not affected by this 1449
section. Personnel employed by the bureau or the commission who 1450

are subject to Chapter 4117. of the Revised Code and who are 1451
members of an exclusive representative as defined in section 1452
4117.01 of the Revised Code shall retain all of their rights and 1453
benefits conferred pursuant to that chapter as it presently 1454
exists or is hereafter amended and nothing in this chapter or 1455
Chapter 4123. of the Revised Code shall be construed as 1456
eliminating or interfering with Chapter 4117. of the Revised 1457
Code or the rights and benefits conferred under that chapter to 1458
public employees or to any bargaining unit. 1459

(2) Hire district and staff hearing officers after 1460
consultation with other commission members and obtaining the 1461
approval of at least one other commission member; 1462

(3) Hire staff and district hearing officers when the 1463
chairperson finds appropriate after obtaining the approval of at 1464
least one other commission member; 1465

(4) Maintain the office for the commission in Columbus; 1466

(5) To the maximum extent possible, use electronic data 1467
processing equipment for the issuance of orders immediately 1468
following a hearing, scheduling of hearings and medical 1469
examinations, tracking of claims, retrieval of information, and 1470
any other matter within the commission's jurisdiction, and shall 1471
provide and input information into the electronic data 1472
processing equipment as necessary to effect the success of the 1473
claims tracking system established pursuant to division (B) (14) 1474
of section 4121.121 of the Revised Code; 1475

(6) Exercise all administrative and nonadjudicatory powers 1476
and duties conferred upon the commission by Chapters 4121., 1477
4123., 4127., and 4131. of the Revised Code; 1478

(7) Approve all contracts for special services. 1479

(D) The chairperson is responsible for all administrative matters and may secure for the commission facilities, equipment, and supplies necessary to house the commission, any employees, and files and records under the commission's control and to discharge any duty imposed upon the commission by law, the expense thereof to be audited and paid in the same manner as other state expenses. For that purpose, the chairperson, separately from the budget prepared by the administrator of workers' compensation, shall prepare and submit to the office of budget and management a budget for each biennium according to sections 101.532 and 107.03 of the Revised Code. The budget submitted shall cover the costs of the commission and staff and district hearing officers in the discharge of any duty imposed upon the chairperson, the commission, and hearing officers by law.

(E) A majority of the commission constitutes a quorum to transact business. No vacancy impairs the rights of the remaining members to exercise all of the powers of the commission, so long as a majority remains. Any investigation, inquiry, or hearing that the commission may hold or undertake may be held or undertaken by or before any one member of the commission, or before one of the deputies of the commission, except as otherwise provided in this chapter and Chapters 4123., 4127., and 4131. of the Revised Code. Every order made by a member, or by a deputy, when approved and confirmed by a majority of the members, and so shown on its record of proceedings, is the order of the commission. The commission may hold sessions at any place within the state. The commission is responsible for all of the following:

(1) Establishing the overall adjudicatory policy and management of the commission under this chapter and Chapters

4123., 4127., and 4131. of the Revised Code, except for those 1511
administrative matters within the jurisdiction of the 1512
chairperson, bureau of workers' compensation, and the 1513
administrator of workers' compensation under those chapters; 1514

(2) Hearing appeals and reconsiderations under this 1515
chapter and Chapters 4123., 4127., and 4131. of the Revised 1516
Code; 1517

(3) Engaging in rulemaking where required by this chapter 1518
or Chapter 4123., 4127., or 4131. of the Revised Code. 1519

Sec. 4121.121. (A) There is hereby created the bureau of 1520
workers' compensation, which shall be administered by the 1521
administrator of workers' compensation. A person appointed to 1522
the position of administrator shall possess significant 1523
management experience in effectively managing an organization or 1524
organizations of substantial size and complexity. A person 1525
appointed to the position of administrator also shall possess a 1526
minimum of five years of experience in the field of workers' 1527
compensation insurance or in another insurance industry, except 1528
as otherwise provided when the conditions specified in division 1529
(C) of this section are satisfied. The governor shall appoint 1530
the administrator as provided in section 121.03 of the Revised 1531
Code, and the administrator shall serve at the pleasure of the 1532
governor. The governor shall fix the administrator's salary on 1533
the basis of the administrator's experience and the 1534
administrator's responsibilities and duties under this chapter 1535
and Chapters 4123., 4125., 4127., 4131., and 4167. of the 1536
Revised Code. The governor shall not appoint to the position of 1537
administrator any person who has, or whose spouse has, given a 1538
contribution to the campaign committee of the governor in an 1539
amount greater than one thousand dollars during the two-year 1540

period immediately preceding the date of the appointment of the 1541
administrator. 1542

The administrator shall hold no other public office and 1543
shall devote full time to the duties of administrator. Before 1544
entering upon the duties of the office, the administrator shall 1545
take an oath of office as required by sections 3.22 and 3.23 of 1546
the Revised Code, and shall file in the office of the secretary 1547
of state, a bond signed by the administrator and by surety 1548
approved by the governor, for the sum of fifty thousand dollars 1549
payable to the state, conditioned upon the faithful performance 1550
of the administrator's duties. 1551

(B) The administrator is responsible for the management of 1552
the bureau and for the discharge of all administrative duties 1553
imposed upon the administrator in this chapter and Chapters 1554
4123., 4125., 4127., 4131., and 4167. of the Revised Code, and 1555
in the discharge thereof shall do all of the following: 1556

(1) Perform all acts and exercise all authorities and 1557
powers, discretionary and otherwise that are required of or 1558
vested in the bureau or any of its employees in this chapter and 1559
Chapters 4123., 4125., 4127., 4131., and 4167. of the Revised 1560
Code, except the acts and the exercise of authority and power 1561
that is required of and vested in the bureau of workers' 1562
compensation board of directors or the industrial commission 1563
pursuant to those chapters. The treasurer of state shall honor 1564
all warrants signed by the administrator, or by one or more of 1565
the administrator's employees, authorized by the administrator 1566
in writing, or bearing the facsimile signature of the 1567
administrator or such employee under sections 4123.42 and 1568
4123.44 of the Revised Code. 1569

(2) Employ, direct, and supervise all employees required 1570

in connection with the performance of the duties assigned to the 1571
bureau by this chapter and Chapters 4123., 4125., 4127., 4131., 1572
and 4167. of the Revised Code, including an actuary, and may 1573
establish job classification plans and compensation for all 1574
employees of the bureau provided that this grant of authority 1575
shall not be construed as affecting any employee for whom the 1576
state employment relations board has established an appropriate 1577
bargaining unit under section 4117.06 of the Revised Code and 1578
who is a member of the exclusive representative, as defined in 1579
section 4117.01 of the Revised Code, selected by the members of 1580
such a bargaining unit. All positions of employment in the 1581
bureau are in the classified civil service except those 1582
employees the administrator may appoint to serve at the 1583
administrator's pleasure in the unclassified civil service 1584
pursuant to section 124.11 of the Revised Code. The 1585
administrator shall fix the salaries of employees the 1586
administrator appoints to serve at the administrator's pleasure, 1587
including the chief operating officer, staff physicians, and 1588
other senior management personnel of the bureau and shall 1589
establish the compensation of staff attorneys of the bureau's 1590
legal section and their immediate supervisors, and take whatever 1591
steps are necessary to provide adequate compensation for other 1592
staff attorneys. 1593

The administrator may appoint a person who holds a 1594
certified position in the classified service within the bureau 1595
to a position in the unclassified service within the bureau. A 1596
person appointed pursuant to this division to a position in the 1597
unclassified service shall retain the right to resume the 1598
position and status held by the person in the classified service 1599
immediately prior to the person's appointment in the 1600
unclassified service, regardless of the number of positions the 1601

person held in the unclassified service. An employee's right to
resume a position in the classified service may only be
exercised when the administrator demotes the employee to a pay
range lower than the employee's current pay range or revokes the
employee's appointment to the unclassified service. An employee
who holds a position in the classified service and who is
appointed to a position in the unclassified service on or after
January 1, 2016, shall have the right to resume a position in
the classified service under this division only within five
years after the effective date of the employee's appointment in
the unclassified service. An employee forfeits the right to
resume a position in the classified service when the employee is
removed from the position in the unclassified service due to
incompetence, inefficiency, dishonesty, drunkenness, immoral
conduct, insubordination, discourteous treatment of the public,
neglect of duty, violation of this chapter or Chapter 124.,
4123., 4125., 4127., 4131., or 4167. of the Revised Code,
violation of the rules of the director of administrative
services or the administrator, any other failure of good
behavior, any other acts of misfeasance, malfeasance, or
nonfeasance in office, or conviction of a felony while employed
in the civil service. An employee also forfeits the right to
resume a position in the classified service upon transfer to a
different agency.

Reinstatement to a position in the classified service
shall be to a position substantially equal to that position in
the classified service held previously, as certified by the
department of administrative services. If the position the
person previously held in the classified service has been placed
in the unclassified service or is otherwise unavailable, the
person shall be appointed to a position in the classified

service within the bureau that the director of administrative 1633
services certifies is comparable in compensation to the position 1634
the person previously held in the classified service. Service in 1635
the position in the unclassified service shall be counted as 1636
service in the position in the classified service held by the 1637
person immediately prior to the person's appointment in the 1638
unclassified service. When a person is reinstated to a position 1639
in the classified service as provided in this division, the 1640
person is entitled to all rights, status, and benefits accruing 1641
to the position during the person's time of service in the 1642
position in the unclassified service. 1643

(3) Reorganize the work of the bureau, its sections, 1644
departments, and offices to the extent necessary to achieve the 1645
most efficient performance of its functions and to that end may 1646
establish, change, or abolish positions and assign and reassign 1647
duties and responsibilities of every employee of the bureau. All 1648
persons employed by the commission in positions that, after 1649
November 3, 1989, are supervised and directed by the 1650
administrator under this section are transferred to the bureau 1651
in their respective classifications but subject to reassignment 1652
and reclassification of position and compensation as the 1653
administrator determines to be in the interest of efficient 1654
administration. The civil service status of any person employed 1655
by the commission is not affected by this section. Personnel 1656
employed by the bureau or the commission who are subject to 1657
Chapter 4117. of the Revised Code and who are members of an 1658
exclusive representative as defined in section 4117.01 of the 1659
Revised Code shall retain all of their rights and benefits 1660
conferred pursuant to that chapter as it presently exists or is 1661
hereafter amended and nothing in this chapter or Chapter 4123. 1662
of the Revised Code shall be construed as eliminating or 1663

interfering with Chapter 4117. of the Revised Code or the rights 1664
and benefits conferred under that chapter to public employees or 1665
to any bargaining unit. 1666

(4) Provide offices, equipment, supplies, and other 1667
facilities for the bureau. 1668

(5) Prepare and submit to the board information the 1669
administrator considers pertinent or the board requires, 1670
together with the administrator's recommendations, in the form 1671
of administrative rules, for the advice and consent of the 1672
board, for classifications of occupations or industries, for 1673
premium rates and contributions, for the amount to be credited 1674
to the surplus fund, for rules and systems of rating, rate 1675
revisions, and merit rating. The administrator shall obtain, 1676
prepare, and submit any other information the board requires for 1677
the prompt and efficient discharge of its duties. 1678

(6) Keep the accounts required by division (A) of section 1679
4123.34 of the Revised Code and all other accounts and records 1680
necessary to the collection, administration, and distribution of 1681
the workers' compensation funds and shall obtain the statistical 1682
and other information required by section 4123.19 of the Revised 1683
Code. 1684

(7) Exercise the investment powers vested in the 1685
administrator by section 4123.44 of the Revised Code in 1686
accordance with the investment policy approved by the board 1687
pursuant to section 4121.12 of the Revised Code and in 1688
consultation with the chief investment officer of the bureau of 1689
workers' compensation. The administrator shall not engage in any 1690
prohibited investment activity specified by the board pursuant 1691
to division (F) (9) of section 4121.12 of the Revised Code and 1692
shall not invest in any type of investment specified in 1693

divisions (B) (1) to (10) of section 4123.442 of the Revised 1694
Code. All business shall be transacted, all funds invested, all 1695
warrants for money drawn and payments made, and all cash and 1696
securities and other property held, in the name of the bureau, 1697
or in the name of its nominee, provided that nominees are 1698
authorized by the administrator solely for the purpose of 1699
facilitating the transfer of securities, and restricted to the 1700
administrator and designated employees. 1701

(8) In accordance with Chapter 125. of the Revised Code, 1702
purchase supplies, materials, equipment, and services. 1703

(9) Prepare and submit to the board an annual budget for 1704
internal operating purposes for the board's approval. The 1705
administrator also shall, separately from the budget the 1706
industrial commission submits, prepare and submit to the 1707
director of budget and management a budget for each biennium. 1708
The budgets submitted to the board and the director shall 1709
include estimates of the costs and necessary expenditures of the 1710
bureau in the discharge of any duty imposed by law. 1711

(10) As promptly as possible in the course of efficient 1712
administration, decentralize and relocate such of the personnel 1713
and activities of the bureau as is appropriate to the end that 1714
the receipt, investigation, determination, and payment of claims 1715
may be undertaken at or near the place of injury or the 1716
residence of the claimant and for that purpose establish 1717
regional offices, in such places as the administrator considers 1718
proper, capable of discharging as many of the functions of the 1719
bureau as is practicable so as to promote prompt and efficient 1720
administration in the processing of claims. All active and 1721
inactive lost-time claims files shall be held at the service 1722
office responsible for the claim. A claimant, at the claimant's 1723

request, shall be provided with information by telephone as to 1724
the location of the file pertaining to the claimant's claim. The 1725
administrator shall ensure that all service office employees 1726
report directly to the director for their service office. 1727

(11) Provide a written binder on new coverage where the 1728
administrator considers it to be in the best interest of the 1729
risk. The administrator, or any other person authorized by the 1730
administrator, shall grant the binder upon submission of a 1731
request for coverage by the employer. A binder is effective for 1732
a period of thirty days from date of issuance and is 1733
nonrenewable. Payroll reports and premium charges shall coincide 1734
with the effective date of the binder. 1735

(12) Set standards for the reasonable and maximum handling 1736
time of claims payment functions, ensure, by rules, the 1737
impartial and prompt treatment of all claims and employer risk 1738
accounts, and establish a secure, accurate method of time 1739
stamping all incoming mail and documents hand delivered to 1740
bureau employees. 1741

(13) Ensure that all employees of the bureau follow the 1742
orders and rules of the commission as such orders and rules 1743
relate to the commission's overall adjudicatory policy-making 1744
and management duties under this chapter and Chapters 4123., 1745
4127., and 4131. of the Revised Code. 1746

(14) Manage and operate a data processing system with a 1747
common data base for the use of both the bureau and the 1748
commission and, in consultation with the commission, using 1749
electronic data processing equipment, shall develop a claims 1750
tracking system that is sufficient to monitor the status of a 1751
claim at any time and that lists appeals that have been filed 1752
and orders or determinations that have been issued pursuant to 1753

section 4123.511 or 4123.512 of the Revised Code, including the 1754
dates of such filings and issuances. 1755

(15) Establish and maintain a medical section within the 1756
bureau. The medical section shall do all of the following: 1757

(a) Assist the administrator in establishing standard 1758
medical fees, approving medical procedures, and determining 1759
eligibility and reasonableness of the compensation payments for 1760
medical, hospital, and nursing services, and in establishing 1761
guidelines for payment policies which recognize usual, 1762
customary, and reasonable methods of payment for covered 1763
services; 1764

(b) Provide a resource to respond to questions from claims 1765
examiners for employees of the bureau; 1766

(c) Audit fee bill payments; 1767

(d) Implement a program to utilize, to the maximum extent 1768
possible, electronic data processing equipment for storage of 1769
information to facilitate authorizations of compensation 1770
payments for medical, hospital, drug, and nursing services; 1771

(e) Perform other duties assigned to it by the 1772
administrator. 1773

(16) Appoint, as the administrator determines necessary, 1774
panels to review and advise the administrator on disputes 1775
arising over a determination that a health care service or 1776
supply provided to a claimant is not covered under this chapter 1777
or Chapter 4123., 4127., or 4131. of the Revised Code or is 1778
medically unnecessary. If an individual health care provider is 1779
involved in the dispute, the panel shall consist of individuals 1780
licensed pursuant to the same section of the Revised Code as 1781
such health care provider. 1782

(17) Pursuant to section 4123.65 of the Revised Code, 1783
approve applications for the final settlement of claims for 1784
compensation or benefits under this chapter and Chapters 4123., 1785
4127., and 4131. of the Revised Code as the administrator 1786
determines appropriate, except in regard to the applications of 1787
self-insuring employers and their employees. 1788

(18) Comply with section 3517.13 of the Revised Code, and 1789
except in regard to contracts entered into pursuant to the 1790
authority contained in section 4121.44 of the Revised Code, 1791
comply with the competitive bidding procedures set forth in the 1792
Revised Code for all contracts into which the administrator 1793
enters provided that those contracts fall within the type of 1794
contracts and dollar amounts specified in the Revised Code for 1795
competitive bidding and further provided that those contracts 1796
are not otherwise specifically exempt from the competitive 1797
bidding procedures contained in the Revised Code. 1798

(19) Adopt, with the advice and consent of the board, 1799
rules for the operation of the bureau. 1800

(20) Prepare and submit to the board information the 1801
administrator considers pertinent or the board requires, 1802
together with the administrator's recommendations, in the form 1803
of administrative rules, for the advice and consent of the 1804
board, for the health partnership program and the qualified 1805
health plan system, as provided in sections 4121.44, 4121.441, 1806
and 4121.442 of the Revised Code. 1807

(C) The administrator, with the advice and consent of the 1808
senate, shall appoint a chief operating officer who has a 1809
minimum of five years of experience in the field of workers' 1810
compensation insurance or in another similar insurance industry 1811
if the administrator does not possess such experience. The chief 1812

operating officer shall not commence the chief operating 1813
officer's duties until after the senate consents to the chief 1814
operating officer's appointment. The chief operating officer 1815
shall serve in the unclassified civil service of the state. 1816

Sec. 4121.69. (A) The administrator of workers' 1817
compensation may establish compensation plans, including 1818
schedules of hourly rates, for the compensation of professional, 1819
administrative, and managerial employees who are employed to 1820
fulfill the duties placed upon the bureau of workers' 1821
compensation pursuant to sections 4121.61 to 4121.69 of the 1822
Revised Code. The administrator may establish rules or policies 1823
for the administration of the respective compensation plans. 1824

This division does not apply to employees for whom the 1825
state employment relations board establishes appropriate 1826
bargaining units pursuant to section 4117.06 of the Revised Code 1827
and who are members of the exclusive representative, as defined 1828
in section 4117.01 of the Revised Code, selected by the members 1829
of such a bargaining unit. 1830

(B) The administrator may employ the services and 1831
resources of any public entity or private person, business, or 1832
association in fulfilling the duties placed upon the bureau of 1833
workers' compensation by sections 4121.61 to 4121.69 of the 1834
Revised Code. The opportunities for Ohioans with disabilities 1835
agency, the director of job and family services, and any other 1836
public officer, employee, or agency shall give to the bureau of 1837
workers' compensation full cooperation and, at the request of 1838
the administrator, enter into a written agreement stating the 1839
procedures and criteria for referring, accepting, and providing 1840
services to claimants in the job placement and rehabilitation 1841
efforts of the bureau of workers' compensation on behalf of a 1842

claimant when referred by the bureau of workers' compensation. 1843

(C) In appropriate cases, the bureau may refer a candidate 1844
to the opportunities for Ohioans with disabilities agency for 1845
participation in a program of the agency. For that purpose, the 1846
bureau of workers' compensation shall compensate the agency for 1847
the nonfederal portion of its services. 1848

Sec. 5501.20. (A) As used in this section: 1849

(1) "Career professional service" means that part of the 1850
competitive classified service that consists of employees of the 1851
department of transportation who, regardless of job 1852
classification, meet both of the following qualifications: 1853

(a) They are supervisors, professional employees who are 1854
not in a collective bargaining unit or who are in a collective 1855
bargaining unit but who are not members of the exclusive 1856
representative of that unit, confidential employees, or 1857
management level employees, all as defined in section 4117.01 of 1858
the Revised Code. 1859

(b) They exercise authority that is not merely routine or 1860
clerical in nature and report only to a higher level 1861
unclassified employee or employee in the career professional 1862
service. 1863

(2) "Demoted" means that an employee is placed in a 1864
position where the employee's wage rate equals, or is not more 1865
than twenty per cent less than, the employee's wage rate 1866
immediately prior to demotion or where the employee's job 1867
responsibilities are reduced, or both. 1868

(3) "Employee in the career professional service with 1869
restoration rights" means an employee in the career professional 1870
service who has been in the classified civil service for at 1871

least two years and who has a cumulative total of at least ten 1872
years of continuous service with the department of 1873
transportation. 1874

(B) Not later than the first day of July of each odd- 1875
numbered year, the director of transportation shall adopt a rule 1876
in accordance with section 111.15 of the Revised Code that 1877
establishes a business plan for the department of transportation 1878
that states the department's mission, business objectives, and 1879
strategies and that establishes a procedure by which employees 1880
in the career professional service will be held accountable for 1881
their performance. The director shall adopt a rule that 1882
establishes a business plan for the department only once in each 1883
two years. Within sixty days after the effective date of a rule 1884
that establishes a business plan for the department, the 1885
director shall adopt a rule in accordance with section 111.15 of 1886
the Revised Code that identifies specific positions within the 1887
department of transportation that are included in the career 1888
professional service. The director may amend the rule that 1889
identifies the specific positions included in the career 1890
professional service whenever the director determines necessary. 1891
Any rule adopted under this division is subject to review and 1892
invalidation by the joint committee on agency rule review as 1893
provided in division (D) of section 111.15 of the Revised Code. 1894
The director shall provide a copy of any rule adopted under this 1895
division to the director of budget and management. 1896

Except as otherwise provided in this section, an employee 1897
in the career professional service is subject to the provisions 1898
of Chapter 124. of the Revised Code that govern employees in the 1899
classified civil service. 1900

(C) After an employee is appointed to a position in the 1901

career professional service, the employee's direct supervisor 1902
shall provide the employee appointed to that position with a 1903
written performance action plan that describes the department's 1904
expectations for that employee in fulfilling the mission, 1905
business objectives, and strategies stated in the department's 1906
business plan. No sooner than four months after being appointed 1907
to a position in the career professional service, an employee 1908
appointed to that position shall receive a written performance 1909
review based on the employee's fulfillment of the mission, 1910
business objectives, and strategies stated in the department's 1911
business plan. After the initial performance review, the 1912
employee shall receive a written performance review at least 1913
once each year or as often as the director considers necessary. 1914
The department shall give an employee whose performance is 1915
unsatisfactory an opportunity to improve performance for a 1916
period of at least six months, by means of a written corrective 1917
action plan, before the department takes any disciplinary action 1918
under this section or section 124.34 of the Revised Code. The 1919
department shall base its performance review forms on its 1920
business plan. 1921

(D) An employee in the career professional service may be 1922
suspended, demoted, or removed because of performance that 1923
hinders or restricts the fulfillment of the department's 1924
business plan or for disciplinary reasons under section 124.34 1925
or 124.57 of the Revised Code. An employee in the career 1926
professional service may appeal only the employee's removal to 1927
the state personnel board of review. An employee in the career 1928
professional service may appeal a demotion or a suspension of 1929
more than three days pursuant to rules the director adopts in 1930
accordance with section 111.15 of the Revised Code. 1931

(E) An employee in the career professional service with 1932

restoration rights has restoration rights if demoted because of 1933
performance that hinders or restricts fulfillment of the 1934
mission, business objectives, or strategies stated in the 1935
department's business plan, but not if involuntarily demoted or 1936
removed for any of the reasons described in section 124.34 or 1937
for a violation of section 124.57 of the Revised Code. The 1938
director shall demote an employee who has restoration rights of 1939
that nature to a position in the classified service that in the 1940
director's judgment is similar in nature to the position the 1941
employee held immediately prior to being appointed to the 1942
position in the career professional service. The director shall 1943
assign to an employee who is demoted to a position in the 1944
classified service as provided in this division a wage rate that 1945
equals, or that is not more than twenty per cent less than, the 1946
wage rate assigned to the employee in the career professional 1947
service immediately prior to the employee's demotion. 1948

Section 2. That existing sections 9.81, 121.40, 124.14, 1949
124.15, 3345.31, 4117.03, 4117.04, 4117.05, 4117.09, 4117.10, 1950
4117.11, 4121.03, 4121.121, 4121.69, and 5501.20 of the Revised 1951
Code are hereby repealed. 1952

Section 3. This act applies to all collective bargaining 1953
agreements entered into pursuant to Chapter 4117. of the Revised 1954
Code on or after the effective date of this act. 1955

Section 4. All items in this section are hereby 1956
appropriated as designated out of any moneys in the state 1957
treasury to the credit of the designated fund. For all 1958
appropriations made in this act, those in the first column are 1959
for fiscal year 2018 and those in the second column are for 1960
fiscal year 2019. The appropriations made in this act are in 1961
addition to any other appropriations made for the FY 2018-FY 1962

2019 biennium.			1963
ERB State Employment Relations Board			1964
General Revenue Fund			1965
GRF125401 Pamphlets and Brochures	\$30,000	\$0	1966
TOTAL GRF General Revenue Fund	\$30,000	\$0	1967
TOTAL ALL BUDGET FUND GROUPS	\$30,000	\$0	1968
PAMPHLETS AND BROCHURES			1969
The foregoing appropriation item 125401, Pamphlets and			1970
Brochures, shall be used by the State Employment Relations Board			1971
to pay the costs of developing, producing, and distributing			1972
pamphlets, brochures, electronic mail, or other literature			1973
explaining a public employee's rights and options under Chapter			1974
4117. of the Revised Code. The Board shall provide these items,			1975
at no cost, to public employees and public employers upon			1976
request.			1977
Any unexpended and unencumbered portion of the foregoing			1978
appropriation item 125401, Pamphlets and Brochures, at the end			1979
of fiscal year 2018 is hereby reappropriated for the same			1980
purpose in fiscal year 2019.			1981
Section 5. Within the limits set forth in this act, the			1982
Director of Budget and Management shall establish accounts			1983
indicating the source and amount of funds for each appropriation			1984
made in this act, and shall determine the form and manner in			1985
which appropriation accounts shall be maintained. Expenditures			1986
from appropriations contained in this act shall be accounted for			1987
as though made in the main operating appropriations act of the			1988
132nd General Assembly.			1989

The appropriations made in this act are subject to all provisions of the main operating appropriations act of the 132nd General Assembly that are generally applicable to such appropriations.

1990
1991
1992
1993

Oregon

(10) "Unfair labor practice" means any unfair labor practice listed in ORS 663.120 to 663.165. [Formerly 662.505; 1975 c.147 §12; 1975 c.163 §2; 2003 c.14 §408]

663.010 "Collective bargaining" defined. For the purposes of this chapter, "collective bargaining" is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party. However, this obligation does not compel either party to agree to a proposal or require the making of a concession. [Formerly 662.515]

663.015 Designated collective bargaining representatives to be exclusive; grievances excepted. Representatives designated or selected for the purposes of collective bargaining, by the majority of the employees in a unit appropriate for such purposes, are the exclusive representatives of all the employees in that unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment. However, an individual employee or a group of employees may at any time present grievances to their employer and have such grievances adjusted, without the intervention of the bargaining representative, if:

- (1) The adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect; and
 - (2) The bargaining representative has been given opportunity to be present at the adjustment.
- [Formerly 662.525]

663.020 Determination of appropriate unit for purposes of collective bargaining. (1) The Employment Relations Board shall decide in each case whether the unit appropriate for the purposes of collective bargaining is the employer unit, craft unit, plant unit, or subdivision thereof. However, the board shall not decide that:

(a) A unit is appropriate for such purposes if the unit includes both professional employees and employees who are not professional employees, unless a majority of the professional employees vote for inclusion in the unit;

(b) A craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior determination of the board unless a majority of the employees in the proposed craft unit vote against separate representation; or

(c) A unit is appropriate for such purposes if it includes, together with other employees, an individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises. However, no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(2) In determining whether a unit is appropriate for the purposes specified in subsection (1) of this section, the extent to which the employees have organized is not controlling. [Formerly 662.545]

663.025 Filing of representation petition; investigation; hearing; election. (1) A petition may be filed with the Employment Relations Board, in accordance with regulations prescribed by the board:

(a) By an employee or group of employees, or any individual or labor organization acting in their behalf, alleging that a substantial number of employees:

(A) Wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in ORS 663.015; or

(B) Assert that the individual or labor organization that has been certified or is being currently recognized by their employer as the bargaining representative is no longer a representative as defined in ORS 663.015; or

(b) By an employer, alleging that one or more individuals or labor organizations have presented to the employer a claim to be recognized as the representative defined in ORS 663.015.

(2) The board shall investigate the petition and if, upon the basis of its findings, the board has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing before the board itself, a member thereof or its agent appointed for that purpose. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot marked at the place of election and certify the results thereof.

(3) In determining whether or not a question of representation exists, the same regulations and rules of decision apply irrespective of the identity of the persons filing the petition or the kind of relief sought.

(4) Nothing in this chapter prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the board. [Formerly 662.555; 1975 c.147 §13; 2003 c.14 §409]

663.030 Conduct of representation election. No election shall be directed in any bargaining unit or any subdivision within which, in the preceding 12 months, a valid election has been held. Employees engaged in an economic strike who are not entitled to reinstatement are eligible to vote, under regulations of the Employment Relations Board consistent with the purposes and provisions of this chapter, in any election conducted within 12 months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted by the board, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election. [Formerly 662.565; 1975 c.147 §13a]

663.035 Filing of deauthorization petition; election; limitation. (1) Upon the filing with the Employment Relations Board by 40 percent or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization requiring membership as a condition of employment, of a petition alleging that they desire that the authority of the labor organization to make such an agreement be rescinded, the board shall direct the conciliator to take a secret ballot, marked at the place of election, of the employees in the unit and to certify the results thereof to the labor organization and to the employer.

(2) No election shall be conducted pursuant to this section in a bargaining unit or a subdivision within which, in the preceding 12 months, a valid election has been held. [Formerly 662.575]

663.040 Filing charge of illegal election practice; investigation; new election. Any person may file with the Employment Relations Board a charge that employees eligible to vote in an election under this chapter have been coerced or restrained in the exercise of this right. The board shall investigate the charge. If, upon the basis of its findings, the board concludes that employees eligible to vote in the election were so coerced or restrained, the board may order another election. [Formerly 662.585; 1975 c.147 §14]

663.045 Obtaining advisory opinions on assertion of federal jurisdiction; findings of board to be public records. (1) In carrying out this chapter, the Employment Relations Board may, pursuant to any applicable federal law, rule or regulation, petition the National Labor Relations Board for an

Senate Bill 1524

Sponsored by Senator KRUSE (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prohibits union security agreements between public employer and union.
Permits public employees to choose not to join union or pay union dues.
Exempts unions from duty to represent public employees who choose not to join union or pay union dues.
Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to mandatory union payments for public employees; creating new provisions; amending ORS 243.650, 243.656, 243.666, 243.672, 243.676, 243.682, 243.684, 243.706, 243.726, 243.742, 243.746, 243.762, 261.345, 292.055, 329A.430, 350.365, 410.614, 443.733 and 652.610; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 243.650 is amended to read:

243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) "Appropriate bargaining unit" means the unit of **union employees** designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. *[However, an appropriate bargaining unit may not include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.]*

(2) "Board" means the Employment Relations Board.

(3) "Certification" means official recognition by the board that a labor organization is the exclusive representative for all of the employees in the appropriate bargaining unit.

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its **union** employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. This subsection may not be construed to prohibit a public employer and a certified or recognized representative of its **union** employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law as long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bar-

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

1 gaining.

2 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute
3 are required by law to submit their differences to a third party for a final and binding decision.

4 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-
5 son who formulates, determines and effectuates management policies in the area of collective bar-
6 gaining.

7 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
8 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
9 employment.

10 (b) "Employment relations" does not include subjects determined to be permissive, nonmanda-
11 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

12 (c) After June 6, 1995, "employment relations" does not include subjects that the Employment
13 Relations Board determines to have a greater impact on management's prerogative than on employee
14 wages, hours, or other terms and conditions of employment.

15 (d) "Employment relations" does not include subjects that have an insubstantial or de minimis
16 effect on public employee wages, hours, and other terms and conditions of employment.

17 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
18 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
19 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
20 gum chewing and similar matters of personal conduct, the standards and procedures for student
21 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
22 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
23 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
24 subsection.

25 (f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
26 Department of Corrections who have direct contact with inmates, "employment relations" includes
27 safety issues that have an impact on the on-the-job safety of the employees or staffing levels that
28 have a significant impact on the on-the-job safety of the employees.

29 (g) For all other employee bargaining except school district bargaining and except as provided
30 in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues
31 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
32 the-job safety of public employees), scheduling of services provided to the public, determination of
33 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
34 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
35 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
36 matters of personal conduct at work, and any other subject proposed that is permissive under par-
37 agraphs (b), (c) and (d) of this subsection.

38 (8) "Exclusive representative" means the labor organization that, as a result of certification by
39 the board or recognition by the employer, has the right to be the collective bargaining agent of all
40 employees in an appropriate bargaining unit.

41 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one
42 or more impartial individuals who review the positions of the parties, resolve factual differences and
43 make recommendations for settlement of the dispute.

44 [(10) "Fair-share agreement" means an agreement between the public employer and the recognized
45 or certified bargaining representative of public employees whereby employees who are not members of

1 *the employee organization are required to make an in-lieu-of-dues payment to an employee organization*
 2 *except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more*
 3 *of the employees in an appropriate bargaining unit covered by such union security agreement declaring*
 4 *they desire that the agreement be rescinded, the board shall take a secret ballot of the employees in the*
 5 *unit and certify the results thereof to the recognized or certified bargaining representative and to the*
 6 *public employer. Unless a majority of the votes cast in an election favor the union security agreement,*
 7 *the board shall certify deauthorization of the agreement. A petition for deauthorization of a union se-*
 8 *curity agreement must be filed not more than 90 calendar days after the collective bargaining agreement*
 9 *is executed. Only one such election may be conducted in any appropriate bargaining unit during the*
 10 *term of a collective bargaining agreement between a public employer and the recognized or certified*
 11 *bargaining representative.]*

12 [(11)] (10) "Final offer" means the proposed contract language and cost summary submitted to
 13 the mediator within seven days of the declaration of impasse.

14 (11) "Independent employee" means a public employee who does not consent to join, re-
 15 new membership in or pay for the services of a labor organization.

16 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
 17 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
 18 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
 19 the proximate relation of employer and employee.

20 (13) "Labor organization" means any organization that has as one of its purposes representing
 21 employees in their employment relations with public employers.

22 (14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior
 23 to the date scheduled for an interest arbitration hearing.

24 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission
 25 and any other board or commission empowered to levy taxes.

26 (16) "Managerial employee" means an employee of the State of Oregon or a public university
 27 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
 28 who represents management's interest by taking or effectively recommending discretionary actions
 29 that control or implement employer policy, and who has discretion in the performance of these
 30 management responsibilities beyond the routine discharge of duties. A "managerial employee" need
 31 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
 32 "managerial employee" does not include faculty members at a community college, college or uni-
 33 versity.

34 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
 35 between the public employer and the exclusive representative regarding employment relations.

36 [(18)] (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclusive
 37 representative in negotiations and contract administration of all persons in an appropriate bargaining
 38 unit who are not members of the organization serving as exclusive representative of the employees.
 39 The payment must be equivalent to regular union dues and assessments, if any, or must be an amount
 40 agreed upon by the public employer and the exclusive representative of the employees.]

41 [(19)] (18) "Public employee" means an employee of a public employer but does not include
 42 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
 43 under [section 41,] Article I, section 41, of the Oregon Constitution, or persons who are confidential
 44 employees, supervisory employees or managerial employees.

45 [(20)] (19) "Public employer" means the State of Oregon, and the following political subdivisions:

1 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
 2 politan service districts, public service corporations or municipal corporations and public and
 3 quasi-public corporations.

4 [(21)] (20) "Public employer representative" includes any individual or individuals specifically
 5 designated by the public employer to act in its interests in all matters dealing with employee rep-
 6 resentation, collective bargaining and related issues.

7 [(22)] (21) "Strike" means a public employee's refusal in concerted action with others to report
 8 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
 9 his or her absence in whole or in part from the full, faithful or proper performance of his or her
 10 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
 11 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
 12 limit or impair the right of any public employee to lawfully express or communicate a complaint or
 13 opinion on any matter related to the conditions of employment.

14 [(23)(a)] (22)(a) "Supervisory employee" means any individual having authority in the interest
 15 of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or dis-
 16 cipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively
 17 to recommend such action, if in connection therewith, the exercise of the authority is not of a
 18 merely routine or clerical nature but requires the use of independent judgment. Failure to assert
 19 supervisory status in any Employment Relations Board proceeding or in negotiations for any col-
 20 lective bargaining agreement does not thereafter prevent assertion of supervisory status in any
 21 subsequent board proceeding or contract negotiation.

22 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
 23 352.002 or the Oregon Health and Science University who:

24 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
 25 sistant dean, head or equivalent position; or

26 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-
 27 search or other scholarly accomplishments.

28 (c) "Supervisory employee" does not include:

29 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
 30 tionally been classified as supervisory;

31 (B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the
 32 work of other employees but does not have the authority to hire, discharge or impose economic
 33 discipline on those employees; or

34 (C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
 35 Science University who is not a faculty member described in paragraph (b) of this subsection.

36 [(24)] (23) "Unfair labor practice" means the commission of an act designated an unfair labor
 37 practice in ORS 243.672.

38 (24) "Union employee" means a public employee who consents to join, renew membership
 39 in or pay for the services of a labor organization.

40 (25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute
 41 mutually agree to submit their differences to a third party for a final and binding decision.

42 **SECTION 2.** Section 3 of this 2018 Act is added to and made a part of ORS 243.650 to
 43 243.782.

44 **SECTION 3.** (1)(a) An independent employee is not required to pay union dues or any
 45 other assessment to defray the cost of a labor organization's services.

(b) If an independent employee does not pay union dues or any other assessment to defray the cost of a labor organization's services:

(A) The independent employee may not benefit from the labor organization's services; and

(B) The labor organization is not required to engage in collective bargaining on behalf of the independent employee or otherwise represent the independent employee in the independent employee's employment relations with the public employer.

(2)(a) A public employer shall determine the wages, benefits and other terms and conditions of employment of an independent employee based on the independent employee's education, experience, training, skills and performance.

(b) A public employer may not determine an independent employee's wages, benefits or other terms and conditions of employment based on the terms of a collective bargaining agreement or any other agreement into which the independent employee did not enter.

(c) Any term or condition of employment determined in accordance with this subsection is valid, nondiscriminatory and does not constitute an unfair labor practice.

(3) A comparison of the terms and conditions of employment of a union employee with the terms and conditions of employment of an independent employee may not form the basis of an unfair labor practice or discrimination claim.

SECTION 4. ORS 243.656 is amended to read:

243.656. The Legislative Assembly finds and declares that:

(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

(2) Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employee organizations can alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees;

(3) Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards employees and the public from injury, impairment and interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers and public employees;

(4) The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government; and

(5) It is the purpose of ORS 243.650 to 243.782 to prohibit compulsory payments to labor organizations by independent employees. It is also the purpose of ORS 243.650 to 243.782 to obligate public employers, [public] union employees and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers.

SECTION 5. ORS 243.666 is amended to read:

243.666. (1) A labor organization certified by the Employment Relations Board or recognized by the public employer is the exclusive representative of the **union** employees of a public employer for the purposes of collective bargaining with respect to employment relations. *[Nevertheless any agreements entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof to the employer of the employee that this has been done.]*

(2) Notwithstanding the provisions of subsection (1) of this section, an individual **union** employee or group of **union** employees at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization, if:

(a) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.

(3) Nothing in this section prevents a public employer from recognizing a labor organization *[which]* **that** represents at least a majority of **union** employees as the exclusive representative of the **union** employees of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative in accordance with ORS 243.686.

SECTION 6. ORS 243.672 is amended to read:

243.672. (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization. *[Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the payment-in-lieu-of-dues from the salaries or wages of the employees.]*

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

(e) Refuse to bargain collectively in good faith with the exclusive representative.

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

1 (i) Violate ORS 243.670 (2).

2 (j) Enter into an agreement that requires independent employees to make payments to
3 a labor organization.

4 (k) Determine an independent employee's wages, benefits or other terms and conditions
5 of employment based on the terms of a collective bargaining agreement or any other agree-
6 ment into which the independent employee did not enter.

7 (L) Determine a union employee's wages, benefits or other terms and conditions of em-
8 ployment based on the terms and conditions of employment of an independent employee.

9 (2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a
10 public employee or for a labor organization or its designated representative to do any of the fol-
11 lowing:

12 (a) Interfere with, restrain or coerce any employee in or because of the exercise of any right
13 guaranteed under ORS 243.650 to 243.782.

14 (b) Refuse to bargain collectively in good faith with the public employer if the labor organization
15 is an exclusive representative.

16 (c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

17 (d) Violate the provisions of any written contract with respect to employment relations, includ-
18 ing an agreement to arbitrate or to accept the terms of an arbitration award, where previously the
19 parties have agreed to accept arbitration awards as final and binding upon them.

20 (e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and
21 sign the resulting contract.

22 [(f)] (3) It is an unfair labor practice for any labor organization to engage in unconventional
23 strike activity not protected for private sector employees under the National Labor Relations Act
24 on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again
25 strikes.

26 [(g)] (4) It is an unfair labor practice for a labor organization or its agents to picket or cause,
27 induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or
28 business premises of any individual who is a member of the governing body of a public employer,
29 with respect to a dispute over a collective bargaining agreement or negotiations over employment
30 relations, if an objective or effect of such picketing is to induce another person to cease doing
31 business with the governing body member's business or to cease handling, transporting or dealing
32 in goods or services produced at the governing body's business. For purposes of this paragraph, a
33 member of the Legislative Assembly is a member of the governing body of a public employer when
34 the collective bargaining negotiation or dispute is between the State of Oregon and a labor organ-
35 ization. The Governor and other statewide elected officials are not considered members of a gov-
36 erning body for purposes of this paragraph. Nothing in this paragraph may be interpreted or applied
37 in a manner that violates the right of free speech and assembly as protected by the Constitution of
38 the United States or the Constitution of the State of Oregon.

39 (5) It is an unfair labor practice for a labor organization to enter into an agreement that
40 requires independent employees to make payments to the labor organization.

41 [(3)] (6) An injured party may file a written complaint with the Employment Relations Board
42 not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor
43 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice
44 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to
45 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee

1 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing
 2 party in any case in which the complaint or answer is found to have been frivolous or filed in bad
 3 faith. The board shall deposit fees received under this section to the credit of the Employment Re-
 4 lations Board Administrative Account.

5 **SECTION 7.** ORS 243.682 is amended to read:

6 243.682. (1) If a question of representation exists, the Employment Relations Board *[shall]*:

7 (a)(A)(i) **Shall**, upon application of a public employer, a public employee or a labor organization,
 8 designate the appropriate bargaining unit, and in making its determination shall consider such fac-
 9 tors as community of interest, wages, hours and other working conditions of the employees involved,
 10 the history of collective bargaining, and the desires of the employees. The board may determine a
 11 unit to be the appropriate unit in a particular case even though some other unit might also be ap-
 12 propriate.

13 (ii) **May not designate as appropriate a bargaining unit that includes both academically**
 14 **licensed and unlicensed or nonacademically licensed school employees. Academically licensed**
 15 **units may include but are not limited to teachers, nurses, counselors, therapists, psychol-**
 16 **ogists, child development specialists and similar positions. This limitation does not apply to**
 17 **any bargaining unit certified or recognized prior to June 6, 1995, or to any school district**
 18 **with fewer than 50 employees.**

19 (B) Unless a labor organization and a public employer agree otherwise, *[the board]* may not
 20 designate as appropriate a bargaining unit that includes:

21 *[(A)]* (i) A faculty member described in ORS 243.650 *[(23)(c)(C)]* **(22)(c)(C)** who supervises one
 22 or more other faculty members; and

23 *[(B)]* (ii) Any faculty member who is supervised by a faculty member described in subparagraph
 24 (A) of this paragraph.

25 (b) **Shall** investigate and conduct a hearing on a petition that has been filed by:

26 (A) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
 27 unit desire to be represented for collective bargaining by an exclusive representative;

28 (B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
 29 unit assert that the designated exclusive representative is no longer the representative of the ma-
 30 jority of the employees in the unit;

31 (C) A public employer alleging that one or more labor organizations has presented a claim to
 32 the public employer requesting recognition as the exclusive representative in an appropriate bar-
 33 gaining unit; or

34 (D) *[An]* **A union** employee or group of **union** employees alleging that 30 percent of the em-
 35 ployees **in an appropriate bargaining unit** assert that the designated exclusive representative is
 36 no longer the representative of the majority of employees in the unit.

37 (2)(a) Notwithstanding subsection (1) of this section, when *[an]* a **union** employee, group of **un-**
 38 **ion** employees or labor organization acting on behalf of the employees files a petition alleging that
 39 a majority of **union** employees in a unit appropriate for the purpose of collective bargaining wish
 40 to be represented by a labor organization for that purpose, or when a labor organization files a pe-
 41 tition alleging that the majority in a group of unrepresented **union** employees seek to be added to
 42 an existing bargaining unit, the board shall investigate the petition. If the board finds that a ma-
 43 jority of the **union** employees in a unit appropriate for bargaining or a majority of **union** employees
 44 in a group of unrepresented employees that is appropriate to add to an existing bargaining unit have
 45 signed authorizations designating the labor organization specified in the petition as the employees'

1 bargaining representative and that no other labor organization is currently certified or recognized
 2 as the exclusive representative of any of the **union** employees in the unit or in the group of unrep-
 3 resented **union** employees seeking to be added to an existing bargaining unit, the board may not
 4 conduct an election but shall certify the labor organization as the exclusive representative unless
 5 a petition for a representation election is filed as provided in subsection (3) of this section.

6 (b) The board by rule shall develop guidelines and procedures for the designation by **union**
 7 employees of a bargaining representative in the manner described in paragraph (a) of this sub-
 8 section. The guidelines and procedures must include:

9 (A) Model collective bargaining authorization language that may be used for purposes of making
 10 the designations described in paragraph (a) of this subsection;

11 (B) Procedures to be used by the board to establish the authenticity of signed authorizations
 12 designating bargaining representatives;

13 (C) Procedures to be used by the board to notify affected employees of the filing of a petition
 14 requesting certification under subsection (3) of this section;

15 (D) Procedures for filing a petition to request a representation election, including a timeline of
 16 not more than 14 days after notice has been delivered to the affected employees of a petition filed
 17 under paragraph (a) of this subsection; and

18 (E) Procedures for expedited resolution of any dispute about the scope of the appropriate bar-
 19 gaining unit. The resolution of the dispute may occur after an election is conducted.

20 (c) Solicitation and rescission of a signed authorization designating bargaining representatives
 21 are subject to the provisions of ORS 243.672.

22 (3)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification has
 23 been filed under subsection (2) of this section, [an] a **union** employee or a group of **union** employees
 24 in the unit designated by the petition, or one or more of the unrepresented **union** employees seeking
 25 to be added to an existing bargaining unit, may file a petition with the board to request that a
 26 representation election be conducted.

27 (b) The petition requesting a representation election must be supported by at least 30 percent
 28 of the **union** employees in the bargaining unit designated by the petition, or 30 percent of the un-
 29 represented **union** employees seeking to be added to an existing bargaining unit.

30 (c) The representation election shall be conducted on-site or by mail not later than 45 days after
 31 the date on which the petition was filed.

32 (4) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to
 33 subsection (1)(b) of this section that a question of representation exists, the board shall conduct an
 34 election by secret ballot, at a time and place convenient for the **union** employees of the jurisdiction
 35 and also within a reasonable period of time after the filing has taken place, and certify the results
 36 of the election.

37 **SECTION 8.** ORS 243.684 is amended to read:

38 243.684. A petition for representation filed under ORS 243.682 (2) must include a statement of
 39 a desire by the **union** employees to be represented and must be signed and dated by the **union** em-
 40 ployees during the 180 days before the petition is filed with the Employment Relations Board.

41 **SECTION 9.** ORS 243.706 is amended to read:

42 243.706. (1) A public employer may enter into a written agreement with the exclusive represen-
 43 tative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding
 44 arbitration or any other dispute resolution process agreed to by the parties. As a condition of
 45 enforceability, any arbitration award that orders the reinstatement of a public employee or other-

1 wise relieves the public employee of responsibility for misconduct shall comply with public policy
 2 requirements as clearly defined in statutes or judicial decisions including but not limited to policies
 3 respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or
 4 deadly force and serious criminal misconduct, related to work. In addition, with respect to claims
 5 that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based
 6 upon the public employer's alleged previous differential treatment of employees for the same or
 7 similar conduct, the arbitration award must conform to the following principles:

8 (a) Some misconduct is so egregious that no employee can reasonably rely on past treatment for
 9 similar offenses as a justification or defense to discharge or other discipline.

10 (b) Public managers have a right to change disciplinary policies at any time, notwithstanding
 11 prior practices, if such managers give reasonable advance notice to affected employees and the
 12 change does not otherwise violate a collective bargaining agreement.

13 (2) In addition to subsection (1) of this section, a public employer may enter into a written
 14 agreement with the exclusive representative of its **union** employees providing that a labor dispute
 15 over conditions and terms of a contract may be resolved through binding arbitration.

16 (3) In an arbitration proceeding under this section, the arbitrators, or a majority of the
 17 arbitrators, may:

18 (a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

19 (A) Compel the attendance of a witness properly served by either party; and

20 (B) Require from either party the production of books, papers and documents the arbitrators find
 21 are relevant to the proceeding;

22 (b) Administer oaths or affirmations to witnesses; and

23 (c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

24 (4) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each
 25 party to the arbitration proceeding.

26 (5) The arbitrators issuing a subpoena under this section may rule on objections to the issuance
 27 of the subpoena.

28 (6) If a person fails to comply with a subpoena issued under this section or if a witness refuses
 29 to testify on a matter on which the witness may be lawfully questioned, the party who requested the
 30 subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to
 31 apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the
 32 application of the attorney of record for the party or on the application of the arbitrators, or a
 33 majority of the arbitrators, the court may require the person or witness to show cause why the
 34 person or witness should not be punished for contempt of court to the same extent and purpose as
 35 if the proceedings were pending before the court.

36 (7) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the
 37 public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

38 **SECTION 10.** ORS 243.726 is amended to read:

39 243.726. (1) Participation in a strike shall be unlawful *{for}*:

40 (a) **For any [public] independent employee;**

41 (b) **For any union** employee who is not included in an appropriate bargaining unit for which
 42 an exclusive representative has been certified by the Employment Relations Board or recognized by
 43 the employer; *[or]*

44 (c) **For any union employee who** is included in an appropriate bargaining unit that provides
 45 for resolution of a labor dispute by petition to final and binding arbitration; or

(d) When the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290.

(2) It shall be lawful for a public employee who is not prohibited from striking under subsection (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike over mandatory subjects of bargaining provided:

(a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes have been complied with in good faith;

(b) Thirty days have elapsed since the board has made public the fact finder's findings of fact and recommendations or the mediator has made public the parties' final offers;

(c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike and stating the reasons for its intent to strike to the board and the public employer;

(d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or renegotiation under ORS 243.698; and

(e) The union's strike does not include unconventional strike activity not protected under the National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice under ORS 243.672 [(2)(f)] (3).

(3)(a) Where the strike occurring or is about to occur creates a clear and present danger or threat to the health, safety or welfare of the public, the public employer concerned may petition the circuit court of the county in which the strike has taken place or is to take place for equitable relief including but not limited to appropriate injunctive relief.

(b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of Marion County.

(c) If, after hearing, the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall include an order that the labor dispute be submitted to final and binding arbitration within 10 days of the court's order pursuant to procedures in ORS 243.746.

(4)(a) A labor organization may not declare or authorize a strike of public employees that is or would be in violation of this section. When it is alleged in good faith by the public employer that a labor organization has declared or authorized a strike of public employees that is or would be in violation of this section, the employer may petition the board for a declaration that the strike is or would be unlawful. The board, after conducting an investigation and hearing, may make such declaration if it finds that such declaration or authorization of a strike is or would be unlawful.

(b) When a labor organization or individual disobeys an order of the appropriate circuit court issued pursuant to enforcing an order of the board involving this section and ORS 243.736 or 243.738, they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the amount of the fine shall be at the discretion of the court.

(5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike. The board upon the filing of an unfair labor charge alleging that a public employer has committed an unfair labor practice during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the court of competent jurisdiction for appropriate relief or a restraining order.

(6) As used in this section, "danger or threat to the health, safety or welfare of the public" does not include an economic or financial inconvenience to the public or to the public employer that is normally incident to a strike by public employees.

1 **SECTION 11.** ORS 243.742 is amended to read:

2 243.742. (1) It is the public policy of the State of Oregon that where the right of employees to
3 strike is by law prohibited, it is requisite to the high morale of such employees and the efficient
4 operation of such departments to afford an alternate, expeditious, effective and binding procedure
5 for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080,
6 240.123, 243.650 to 243.782, 292.055 and 341.290, providing for compulsory arbitration, shall be liber-
7 ally construed.

8 (2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation of a labor
9 dispute, have not culminated in a signed agreement between the parties who are prohibited from
10 striking, the public employer and exclusive representative of its **union** employees shall include with
11 the final offer filed with the mediator a petition to the Employment Relations Board in writing that
12 initiates binding arbitration for bargaining units with employees referred to in ORS 243.736 or
13 243.738. Arbitration shall be scheduled by mutual agreement not earlier than 30 days following the
14 submission of the final offer packages to the mediator. Arbitration shall be scheduled in accordance
15 with the procedures prescribed in ORS 243.746.

16 **SECTION 12.** ORS 243.746 is amended to read:

17 243.746. (1) In carrying out the arbitration procedures authorized in ORS 243.712, 243.726 (3)(c)
18 and 243.742, the public employer and the exclusive representative may select their own arbitrator.

19 (2) Where the parties have not selected their own arbitrator within five days after notification
20 by the Employment Relations Board that arbitration is to be initiated, the board shall submit to the
21 parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon interest arbi-
22 trations and fact-findings for which each person has issued an award shall be included. Each party
23 shall alternately strike three names from the list. The order of striking shall be determined by lot.
24 The remaining individual shall be designated the "arbitrator":

25 (a) When the parties have not designated the arbitrator and notified the board of their choice
26 within five days after receipt of the list, the board shall appoint the arbitrator from the list. How-
27 ever, if one of the parties strikes the names as prescribed in this subsection and the other party fails
28 to do so, the board shall appoint the arbitrator only from the names remaining on the list.

29 (b) The concerns regarding the bias and qualifications of the person designated by lot or by
30 appointment may be challenged by a petition filed directly with the board. A hearing shall be held
31 by the board within 10 days of filing of the petition and the board shall issue a final and binding
32 decision regarding the person's neutrality within 10 days of the hearing.

33 (3) The arbitrator shall establish dates and places of hearings. Upon the request of either party
34 or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date
35 of the hearing, each party shall submit to the other party a written last best offer package on all
36 unresolved mandatory subjects, and neither party may change the last best offer package unless
37 pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for
38 the hearing may thereafter be changed only for compelling reasons or by mutual consent of the
39 parties. If either party provides notice of a change in its position within 24 hours of the 14-day
40 deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator
41 may administer oaths and shall afford all parties full opportunity to examine and cross-examine all
42 witnesses and to present any evidence pertinent to the dispute.

43 (4) Where there is no agreement between the parties, or where there is an agreement but the
44 parties have begun negotiations or discussions looking to a new agreement or amendment of the
45 existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties' last

best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary priority to paragraphs (b) to (h) of this subsection as follows:

(a) The interest and welfare of the public.

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

(c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

(d) The overall compensation presently received by the **union** employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received.

(e) Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, "comparable" is limited to communities of the same or nearest population range within Oregon. Notwithstanding the provisions of this paragraph, the following additional definitions of "comparable" apply in the situations described as follows:

(A) For any city with a population of more than 325,000, "comparable" includes comparison to out-of-state cities of the same or similar size;

(B) For counties with a population of more than 400,000, "comparable" includes comparison to out-of-state counties of the same or similar size;

(C) Except as otherwise provided in subparagraphs (D) and (E) of this paragraph, for the State of Oregon, "comparable" includes comparison to other states;

(D) For the Department of State Police troopers, "comparable" includes the base pay for city police officers employed by the five most populous cities in this state; and

(E) For Department of State Police telecommunicators, as defined in ORS 181A.355, "comparable" includes the base pay for telecommunicators employed by the five public safety answering points in this state, as defined in ORS 403.105, with the most employees.

(f) The CPI-All Cities Index, commonly known as the cost of living.

(g) The stipulations of the parties.

(h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and order. The opinion and order shall be served on the parties and the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be based on the criteria prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute.

SECTION 13. ORS 243.762 is amended to read:

243.762. Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290 is intended to prohibit a public employer and the exclusive representative of its **union** employees from entering into a collective bargaining agreement *[which]* **that** provides for a compulsory arbitration procedure *[which]* **that** is substantially equivalent to ORS 243.742 to 243.756.

SECTION 14. ORS 261.345 is amended to read:

261.345. (1) All labor employed by a district, directly or indirectly, shall be employed under and in pursuance of the provisions of ORS 279B.235, 279C.540, 279C.545, 653.268 and 653.269.

(2) The minimum scale of wages to be paid by a people's utility district or by any contractor or subcontractor for such district shall be not less than the prevailing wage for the character of work in the same trade in the largest city having a population of 5,000 or more in the district, or if there is none, the nearest to the district.

(3) The board of directors of any utility district may negotiate, sign and maintain collective bargaining agreements concerning employment, rates of pay and working conditions with the representatives of its employees **who consent to join, renew membership in or pay for the services of a labor organization**. Notice in writing of any intended change in rates of pay, or working conditions, or both, shall be given in accordance with the provisions of the agreements. The provisions of ORS 243.650 to 243.782 shall govern the negotiation of a collective bargaining agreement and any changes to an existing agreement. The mutual rights and obligations of the board and the employees or their representatives shall be those provided under ORS 243.650 to 243.782.

(4) Whenever any district acquires any utility *[which]* **that** at the time of acquisition is in private ownership:

(a) The district shall, within financial and organizational limitations, offer employment to all employees of the private utility whose work primarily served the affected territory.

(b) Where the employees of the private utility are, at the time of acquisition, covered by any collective bargaining contract, plan for individual annuity contracts, retirement income policies, group annuity contract or group insurance for the benefit of employees, the district shall maintain any benefits or privileges that employees of the acquired utility would receive or be entitled to had the acquisition not occurred by:

(A) Assuming for one year all of the rights, obligations and liabilities of the acquired private utility in regard to that collective bargaining contract or plan for the employees covered thereby at the time of acquisition; or

(B) Substituting a similar plan or contract under an agreement with a majority of the affected employees.

(c) The district may pay all or part of the premiums or other payments required under paragraph (b) of this subsection out of the revenue derived from the operation of its properties.

(d) The district shall recognize the collective bargaining agent of the employees if the district retains a majority of the employees of the private utility working in the affected territory.

SECTION 15. ORS 292.055 is amended to read:

292.055. (1) **Except as provided in subsection (6) of this section**, upon receipt of the request in writing of a state officer or employee so to do, the state official authorized to disburse funds in payment of the salary or wages of such state officer or employee each month shall deduct from the salary or wages of such officer or employee the amount of money indicated in such request, for payment thereof to a labor organization as the same is defined in ORS 243.650.

(2) Such state official each month shall pay such amount so deducted to any such labor organization so designated to receive it.

(3) Unless there is a contract to the contrary, upon receipt of the request in writing of such officer or employee so to do, such state official shall cease making such deductions and payments.

(4) In addition to making such deductions and payments to any labor organization certified under the rules of the Employment Relations Board as representatives of employees in a bargaining unit, any department, board, commission, bureau, institution or other agency of the state shall make deductions for and payments to noncertified, yet bona fide, labor organizations, if requested to do so by officers and employees in that department, board, commission, bureau, institution, or other state agency, and for so long as the requests are not revoked. No deductions for and payments to any labor organization under this section shall be deemed an unfair labor practice under ORS 243.672.

(5) Upon receipt from the Oregon Department of Administrative Services of a copy of a valid fair-share agreement in a collective bargaining unit, the state official authorized to disburse funds in payment of the salary or wages of the employees in such unit each month shall deduct from the salary or wages of the employees covered by the agreement the in-lieu-of-dues payment stated in the agreement and pay such amount to the labor organization party the agreement in the same manner as deducted dues are paid to a labor organization. Such deduction and payment shall continue for the life of the agreement.

(6) No amount of money may be deducted for payment to a labor organization from the salary or wages of a state officer or employee who is an independent employee as defined in ORS 243.650.

SECTION 16. ORS 329A.430 is amended to read:

329A.430. (1) As used in this section:

(a) "Certified family child care provider" means an individual who operates a family child care home that is certified under ORS 329A.280.

(b) "Child care subsidy" means a payment made by the state on behalf of eligible children for child care services provided for periods of less than 24 hours in a day.

(c) "Exempt family child care provider" means an individual who provides child care services in the home of the individual or in the home of the child, whose services are not required to be certified or registered under ORS 329A.250 to 329A.450 and who receives a child care subsidy.

(d) "Family child care provider" means an individual who is a certified, registered or exempt family child care provider.

(e) "Registered family child care provider" means an individual who operates a family child care home that is registered under ORS 329A.330.

(2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is the public employer of record of family child care providers.

(3) Notwithstanding ORS 243.650 [(19)] (18), family child care providers are considered to be public employees governed by ORS 243.650 to 243.782. Family child care providers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining on matters concerning labor relations. These rights shall be exercised in accordance with the rights granted to public employees, with mediation and interest arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Family child care providers may not strike.

(4) Notwithstanding subsections (2) and (3) of this section, family child care providers are not for any other purpose employees of the State of Oregon or any other public body.

(5) The Oregon Department of Administrative Services shall represent the State of Oregon in

1 collective bargaining negotiations with the certified or recognized exclusive representatives of all
 2 appropriate bargaining units of family child care providers. The Oregon Department of Administra-
 3 tive Services is authorized to agree to terms and conditions of collective bargaining agreements on
 4 behalf of the State of Oregon.

5 (6) Notwithstanding ORS 243.650 (1):

6 (a) The appropriate bargaining unit for certified and registered family child care providers is a
 7 bargaining unit of all certified and registered family child care providers in the state **who consent**
 8 **to join, renew membership in or pay for the services of a labor organization.**

9 (b) The appropriate bargaining unit for exempt family child care providers is a bargaining unit
 10 of all exempt family child care providers in the state **who consent to join, renew membership in**
 11 **or pay for the services of a labor organization.**

12 (7) This section does not modify any right of a parent or legal guardian to choose and terminate
 13 the services of a family child care provider.

14 **SECTION 17.** ORS 243.676 is amended to read:

15 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is
 16 engaging in any unfair labor practice listed in ORS 243.672 (1) [and (2)] to (5) and 243.752, the
 17 Employment Relations Board or its agent shall:

18 (a) Cause to be served upon such person a copy of the complaint;

19 (b) Investigate the complaint to determine if a hearing on the unfair labor practice charge is
 20 warranted. If the investigation reveals that no issue of fact or law exists, the board may dismiss the
 21 complaint; and

22 (c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph
 23 (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or
 24 an agent of the board not more than 20 days after a copy of the complaint has been served on the
 25 person.

26 (2) Where, as a result of the hearing required pursuant to subsection (1)(c) of this section, the
 27 board finds that any person named in the complaint has engaged in or is engaging in any unfair
 28 labor practice charged in the complaint, the board shall:

29 (a) State its findings of fact;

30 (b) Issue and cause to be served on such person an order that the person cease and desist from
 31 the unfair labor practice;

32 (c) Take such affirmative action, including but not limited to the reinstatement of employees
 33 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,
 34 240.123, 243.650 to 243.782, 292.055 and 341.290;

35 (d) Designate the amount and award representation costs, if any, to the prevailing party; and

36 (e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal, in-
 37 cluding proceedings for Supreme Court review, of a board order.

38 (3) Where the board finds that the person named in the complaint has not engaged in or is not
 39 engaging in an unfair labor practice, the board shall:

40 (a) Issue an order dismissing the complaint; and

41 (b) Designate the amount and award representation costs, if any, to the prevailing party.

42 (4)(a) The board may award a civil penalty to any person as a result of an unfair labor practice
 43 complaint hearing, in the aggregate amount of up to \$1,000 per case, without regard to attorney fees,
 44 if:

45 (A) The complaint has been affirmed pursuant to subsection (2) of this section and the board

1 finds that the person who has committed, or who is engaging, in an unfair labor practice has done
 2 so repetitively, knowing that the action taken was an unfair labor practice and took the action
 3 disregarding this knowledge, or that the action constituting the unfair labor practice was egregious;
 4 or

5 (B) The complaint has been dismissed pursuant to subsection (3) of this section, and that the
 6 complaint was frivolously filed, or filed with the intent to harass the other person, or both.

7 (b) Notwithstanding paragraph (a) of this subsection, if the board finds that a public employer
 8 named in the complaint violated ORS 243.670 (2), the board shall impose a civil penalty equal to
 9 triple the amount of funds the public employer expended to assist, promote or deter union organiz-
 10 ing.

11 (5) As used in subsections (1) to (4) of this section, "person" includes but is not limited to indi-
 12 viduals, labor organizations, associations and public employers.

13 **SECTION 18.** ORS 350.365 is amended to read:

14 350.365. Not later than July 1 of each year, the Higher Education Coordinating Commission
 15 shall report to the Legislative Assembly in the manner provided by ORS 192.245:

16 (1) For each public university listed in ORS 352.002, the number of employees and the number
 17 of full-time equivalent employees of the university in the following categories:

18 (a) Supervisory employees, as defined in ORS 243.650 [(23)], who supervise classified employees
 19 covered by a collective bargaining agreement;

20 (b) Full-time faculty;

21 (c) Part-time faculty; and

22 (d) Classified employees.

23 (2) A recommendation on whether a different method of data tracking would improve the ability
 24 of the Legislative Assembly to obtain the most precise and relevant data on staffing ratios without
 25 placing undue financial burdens on public universities.

26 **SECTION 19.** ORS 410.614 is amended to read:

27 410.614. (1) Notwithstanding ORS 243.650 [(19) and (20)] (18) and (19), the Home Care Commis-
 28 sion shall be considered a public employer and home care workers shall be considered public em-
 29 ployees governed by ORS 243.650 to 243.782.

30 (2) Home care workers have the right to form, join and participate in the activities of labor
 31 organizations of their own choosing for the purpose of representation and collective bargaining with
 32 the commission on matters concerning employment relations. These rights shall be exercised in ac-
 33 cordance with the rights granted to public employees with mediation and interest arbitration under
 34 ORS 243.742 as the method of concluding the collective bargaining process.

35 (3) Home care workers are not public employees with respect to the Public Employees Retirement
 36 System, the Oregon Public Service Retirement Plan or the Public Employees' Benefit Board.

37 (4) Home care workers do not have the right to strike.

38 **SECTION 20.** ORS 443.733 is amended to read:

39 443.733. (1) As used in this section, "adult foster care home provider" means a person who op-
 40 erates an adult foster home in the provider's home and who receives fees or payments from state
 41 funds for providing adult foster care home services. "Adult foster care home provider" does not in-
 42 clude a person:

43 (a) Who is a resident manager of an adult foster home who does not provide adult foster care
 44 home services in the resident manager's own home or who does not have a controlling interest in,
 45 or is not an officer or partner in, the entity that is the provider of adult foster care home services;

1 (b) Who is not a natural person; or

2 (c) Whose participation in collective bargaining is determined by the licensing agency to be in-
3 consistent with this section or in violation of state or federal law.

4 (2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is
5 the public employer of record of adult foster care home providers.

6 (3) Notwithstanding ORS 243.650 [(19)] (18), adult foster care home providers are considered to
7 be public employees governed by ORS 243.650 to 243.782. Adult foster care home providers have the
8 right to form, join and participate in the activities of labor organizations of their own choosing for
9 the purposes of representation and collective bargaining on matters concerning labor relations.
10 Mandatory subjects of collective bargaining include but are not limited to provider base rates and
11 add-on payments. These rights shall be exercised in accordance with the rights granted to public
12 employees, with mediation and interest arbitration under ORS 243.742 as the method of concluding
13 the collective bargaining process. Adult foster care home providers may not strike.

14 (4) Notwithstanding subsections (2) and (3) of this section, adult foster care home providers are
15 not for any other purpose employees of the State of Oregon or any other public body.

16 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
17 collective bargaining negotiations with the certified or recognized exclusive representative of an
18 appropriate bargaining unit of adult foster care home providers. The Oregon Department of Admin-
19 istrative Services is authorized to agree to terms and conditions of collective bargaining agreements
20 on behalf of the State of Oregon.

21 (6) Notwithstanding ORS 243.650 (1), an appropriate bargaining unit for adult foster care home
22 providers is any bargaining unit recognized by the Governor in an executive order issued prior to
23 January 1, 2008.

24 (7) This section does not modify any right of an adult receiving foster care.

25 **SECTION 21.** ORS 652.610 is amended to read:

26 652.610. (1)(a) All persons, firms, partnerships, associations, cooperative associations, corpo-
27 rations, municipal corporations, the state and its political subdivisions, except the federal govern-
28 ment and its agencies, employing, in this state, during any calendar month one or more persons,
29 shall provide the employee on regular paydays and at other times payment of wages, salary or
30 commission is made, with an itemized statement as described in paragraph (b) of this subsection.

31 (b) The statement required under this subsection must be a written statement, sufficiently
32 itemized to show:

33 (A) The date of the payment;

34 (B) The dates of work covered by the payment;

35 (C) The name of the employee;

36 (D) The name and business registry number or business identification number;

37 (E) The address and telephone number of the employer;

38 (F) The rate or rates of pay;

39 (G) Whether the employee is paid by the hour, shift, day or week or on a salary, piece or com-
40 mission basis;

41 (H) Gross wages;

42 (I) Net wages;

43 (J) The amount and purpose of each deduction made during the respective period of service that
44 the payment covers;

45 (K) Allowances, if any, claimed as part of minimum wage;

(L) Unless the employee is paid on a salary basis and is exempt from overtime compensation as established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked and pay for those hours, and the number of overtime hours worked and pay for those hours; and

(M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number of pieces completed at each piece rate and the total pay for each rate.

(c) Notwithstanding paragraph (b) of this subsection, the employer may provide the statement required under this subsection to the employee in electronic form pursuant to ORS 84.001 to 84.061 if:

(A) The statement contains the information described in paragraph (b) of this section;

(B) The employee expressly agrees to receive the statement in electronic form; and

(C) The employee has the ability to print or store the statement at the time of receipt.

(2)(a) The statement may be attached to or be a part of the check, draft, voucher or other instrument by which payment is made, or may be delivered separately from the instrument.

(b) The statement shall be provided electronically at the time payment is made to all state officers and employees paid electronically under the state payroll system as provided by ORS 292.026.

(c) State agencies shall provide access to electronic statements to employees who do not have regular access to computers in their workplace.

(d) Notwithstanding paragraph (b) of this subsection, if an officer or employee paid under the state payroll system as provided by ORS 292.026 wants to receive payment of net salary and wages by check or to receive a paper statement of itemized payroll deductions, the officer or employee shall request paper statements or payment by check in accordance with the procedures adopted by rule by the Oregon Department of Administrative Services.

(3) An employer may not withhold, deduct or divert any portion of an employee's wages unless:

(a) The employer is required to do so by law;

(b) The deductions are voluntarily authorized in writing by the employee, are for the employee's benefit and are recorded in the employer's books;

(c) The employee has voluntarily signed an authorization for a deduction for any other item, provided that the ultimate recipient of the money withheld is not the employer and that the deduction is recorded in the employer's books;

(d) The deduction is authorized by a collective bargaining agreement to which the employer is a party;

(e) The deduction is authorized under ORS 18.736; or

(f) The deduction is made from the payment of wages upon termination of employment and is authorized pursuant to a written agreement between the employee and employer for the repayment of a loan made to the employee by the employer, if all of the following conditions are met:

(A) The employee has voluntarily signed the agreement;

(B) The loan was paid to the employee in cash or other medium permitted by ORS 652.110;

(C) The loan was made solely for the employee's benefit and was not used, either directly or indirectly, for any purpose required by the employer or connected with the employee's employment with the employer;

(D) The amount of the deduction at termination of employment does not exceed the amount permitted to be garnished under ORS 18.385; and

(E) The deduction is recorded in the employer's books.

(4) When an employer deducts an amount from an employee's wages as required or authorized

1 by law or agreement, the employer shall pay the amount deducted to the appropriate recipient as
2 required by the law or agreement. The employer shall pay the amount deducted within the time re-
3 quired by the law or the agreement or, if the time for payment is not specified by the law or
4 agreement, within seven days after the date the wages from which the deductions are made are due.
5 Failure to pay the amount as required constitutes an unlawful deduction.

6 (5) This section does not:

7 (a) Prohibit the withholding of amounts authorized in writing by the employee to be contributed
8 by the employee to charitable organizations, including contributions made pursuant to ORS [243.666
9 and] 663.110;

10 (b) Prohibit deductions by checkoff dues to labor organizations or service fees when the de-
11 ductions are not otherwise prohibited by law; or

12 (c) Diminish or enlarge the right of any person to assert and enforce a lawful setoff or
13 counterclaim or to attach, take, reach or apply an employee's compensation on due legal process.

14 **SECTION 22.** Section 3 of this 2018 Act and the amendments to ORS 243.650, 243.656,
15 243.666, 243.672, 243.682, 243.684, 243.706, 243.726, 243.742, 243.746, 243.762, 261.345, 292.055 and
16 329A.430 by sections 1 and 4 to 16 of this 2018 Act apply to all contracts and collective bar-
17 gaining agreements entered into, renewed or extended on or after the effective date of this
18 2018 Act.

19 **SECTION 23.** This 2018 Act being necessary for the immediate preservation of the public
20 peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect
21 on its passage.
22

Pennsylvania

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WESTLAW

**Unofficial Purdon's Pennsylvania Statutes
from Westlaw**[Home Table of Contents](#)**§ 1102.3. Fair share fee**
Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 43 P.S. Labor**Purdon's Pennsylvania Statutes and Consolidated Statutes**
Title 43 P.S. Labor (Refs & Annos)
Chapter 19A. Public Employee Fair Share Fee Law

43 P.S. § 1102.3

§ 1102.3. Fair share feeCurrentness

If the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.

Credits

1993, June 2, P.L. 45, No. 15, § 3, imd. effective.

43 P.S. § 1102.3, PA ST 43 P.S. § 1102.3

Current through 2018 Regular Session Acts 1 to 47, 51, 52, 54, 65, 66, 71 and 72

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Rhode Island

Legislative Status Report

 [Back](#)

Condition: {Session Year: 2018} {Bills: 7377}

House Bill No. 7377 SUB A

Chapter 144

BY McEntee, Shekarchi, Canario, O'Brien, Almeida**ENTITLED**, AN ACT RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- MUNICIPAL POLICE AND FIREFIGHTERS' ARBITRATION (Relieves municipal police and firefighter bargaining representatives from their obligation to represent employees in grievances/arbitrations if they were not members of the bargaining unit within the 90 days prior to the events that caused the grievance.)

{LC4282/A/1}

01/31/2018 Introduced, referred to House Labor

02/19/2018 Scheduled for hearing and/or consideration (03/01/2018)

03/01/2018 Committee recommended measure be held for further study

05/25/2018 Scheduled for consideration (05/31/2018)

05/31/2018 Committee recommends passage of Sub A

06/01/2018 Placed on House Calendar (06/05/2018)

06/05/2018 House passed Sub A

06/07/2018 Referred to Senate Labor

06/15/2018 Scheduled for hearing and/or consideration (06/19/2018)

06/19/2018 Committee recommends passage of Sub A in concurrence

06/21/2018 Placed on Senate Calendar (06/21/2018)

06/21/2018 Senate passed Sub A in concurrence

07/02/2018 Transmitted to Governor

07/02/2018 Signed by Governor

 Total Bills: 1

Legislative Data Systems Room 1 8/14/2018

State House, Providence, Rhode Island 1:08 PM

2018 -- H 7377 SUBSTITUTE A

LC004282/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- MUNICIPAL POLICE AND
FIREFIGHTERS' ARBITRATION

Introduced By: Representatives McEntee, Shekarchi, Canario, O'Brien, and Almeida

Date Introduced: January 31, 2018

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 28-9.1 of the General Laws entitled "Firefighters' Arbitration" is
2 hereby amended by adding thereto the following section:

3 **28-9.1-18. Exclusive bargaining representative obligations.**

4 (a) The exclusive representative shall have the right to act for and negotiate agreements
5 covering all employees in the bargaining unit. Nothing in the provision shall require the exclusive
6 representative to provide representation at any level of the grievance process, including
7 arbitration, in any case on behalf of an employee who has elected not to maintain membership in
8 the employee organization for a period of at least ninety (90) days prior to the events giving rise
9 to the grievance.

10 (b) An employee who has elected not to maintain membership in the employee
11 organization may, at their own expense, pursue a grievance against the employer and have such
12 grievance heard, without intervention by the exclusive representative, provided that the exclusive
13 representative is afforded the opportunity to be present at such grievance/arbitration hearing and
14 that any resolution of the grievance shall not be inconsistent with the terms of the collective
15 bargaining agreement then in effect between the employer and the exclusive representative. The
16 exclusive representative shall have no obligation to incur expenses related to a grievance initiated
17 by an employee who has elected not to maintain membership in the employee organization for a
18 period of at least ninety (90) days prior to the events giving rise to the grievance.

1 SECTION 2. Chapter 28-9.2 of the General Laws entitled "Municipal Police Arbitration"
2 is hereby amended by adding thereto the following section:

3 **28-9.2-18. Exclusive bargaining representative obligations.**

4 (a) The exclusive representative shall have the right to act for and negotiate agreements
5 covering all employees in the bargaining unit. Nothing in the provision shall require the exclusive
6 representative to provide representation at any level of the grievance process, including
7 arbitration, in any case on behalf of an employee who has elected not to maintain membership in
8 the employee organization for a period of at least ninety (90) days prior to the events giving rise
9 to the grievance.

10 (b) An employee who has elected not to maintain membership in the employee
11 organization may, at their own expense, pursue a grievance against the employer and have such
12 grievance heard, without intervention by the exclusive representative, provided that the exclusive
13 representative is afforded the opportunity to be present at such grievance/arbitration hearing and
14 that any resolution of the grievance shall not be inconsistent with the terms of the collective
15 bargaining agreement then in effect between the employer and the exclusive representative. The
16 exclusive representative shall have no obligation to incur expenses related to a grievance initiated
17 by an employee who has elected not to maintain membership in the employee organization for a
18 period of at least ninety (90) days prior to the events giving rise to the grievance.

19 SECTION 3. This act shall take effect upon passage.

=====

LC004282/SUB A

=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- MUNICIPAL POLICE AND
FIREFIGHTERS' ARBITRATION

- 1 This act would relieve municipal police and firefighter bargaining representatives from
- 2 their obligation to represent employees in grievances/arbitrations if they were not members of the
- 3 bargaining unit within the ninety (90) days prior to the events that caused the grievance.
- 4 This act would take effect upon passage.

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LC004282/SUB A

=====

2018 -- S 2160

LC003483

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- MUNICIPAL EMPLOYEES'
ARBITRATION

Introduced By: Senators Coyne, Lombardi, Seveney, Calkin, and DiPalma

Date Introduced: January 23, 2018

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 28-9.4 of the General Laws entitled "Municipal Employees'
2 Arbitration" is hereby amended by adding thereto the following section:

3 **28-9.4-20. Exclusive bargaining representative obligations.**

4 (a) The exclusive representative shall have the right to act for and negotiate agreements
5 covering all employees in the bargaining unit. Nothing in the provision shall require the exclusive
6 representative to provide representation at any level of the grievance process, including
7 arbitration, in any case on behalf of an employee who has elected not to maintain membership in
8 the employee organization for a period of at least ninety (90) days prior to the events giving rise
9 to the grievance.

10 (b) An employee who has elected not to maintain membership in the employee
11 organization may, at their own expense, pursue a grievance against the employer and have such
12 grievance heard, without intervention by the exclusive representative, provided that the exclusive
13 representative is afforded the opportunity to be present at such grievance/arbitration hearing and
14 that any resolution of the grievance shall not be inconsistent with the terms of the collective
15 bargaining agreement then in effect between the employer and the exclusive representative. The
16 exclusive representative shall have no obligation to incur expenses related to a grievance initiated
17 by an employee who has elected not to maintain membership in the employee organization for a
18 period of at least ninety (90) days prior to the events giving rise to the grievance.

1 SECTION 2. This act shall take effect upon passage.

LC003483

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- MUNICIPAL EMPLOYEES'
ARBITRATION

- 1 This act would relieve municipal employee bargaining representatives from their
2 obligation to represent employees in grievances/arbitrations if they were not members of the
3 bargaining unit in the ninety (90) days prior to the events that caused the grievance.
4 This act would take effect upon passage.

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LC003483
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2018 -- H 7376

LC004286

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- ORGANIZATION OF STATE
EMPLOYEES

Introduced By: Representatives McEntee, Shekarchi, Canario, O'Brien, and Almeida

Date Introduced: January 31, 2018

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 36-11 of the General Laws entitled "Organization of State
2 Employees" is hereby amended by adding thereto the following section:

3 **36-11-14. Exclusive bargaining representative obligations.**

4 (a) The exclusive representative shall have the right to act for and negotiate agreements
5 covering all employees in the bargaining unit. Nothing in the provision shall require the exclusive
6 representative to provide representation at any level of the grievance process, including
7 arbitration, in any case, on behalf of an employee who has elected not to maintain membership in
8 the employee organization for a period of at least ninety (90) days prior to the events giving rise
9 to the grievance.

10 (b) An employee who has elected not to maintain membership in the employee
11 organization may, at their own expense, pursue a grievance against the employer and have such
12 grievance heard, without intervention by the exclusive representative, provided that the exclusive
13 representative is afforded the opportunity to be present at such grievance/arbitration hearing and
14 that any resolution of the grievance shall not be inconsistent with the terms of the collective
15 bargaining agreement then in effect between the employer and the exclusive representative. The
16 exclusive representative shall have no obligation to incur expenses related to a grievance initiated
17 by an employee who has elected not to maintain membership in the employee organization for a
18 period of at least ninety (90) days prior to the events giving rise to the grievance.

1 SECTION 2. This act shall take effect upon passage.

LC004286

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- ORGANIZATION OF STATE
EMPLOYEES

- 1 This act would relieve state employee bargaining representatives from their obligation to
2 represent employees in grievances/arbitrations if they were not members of the bargaining unit in
3 the ninety (90) days prior to the events that caused the grievance.
4 This act would take effect upon passage.

LC004286

Vermont

The Vermont Statutes Online

Title 21 : Labor

Chapter 019 : Vermont State Labor Relations Act

Subchapter 001 : General Provisions

(Cite as: 21 V.S.A. § 1503)

§ 1503. Rights of employees; mutual duty to bargain

(a) Employees shall have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in subsection 1621(a) of this title. An employee who exercises the right not to join the labor organization representing the employee's certified unit pursuant to section 1581 of this title shall, subject to subsection (b) of this section, pay the agency fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The labor organization agrees to indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the agency fee.

(b) A labor organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(2) An opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute.

(3) Prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the labor organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency fee. The costs of arbitration shall be paid by the labor organization. (Added 1967, No. 198, § 3; amended 2013, No. 37, § 14, eff. June 30, 2013; 2017, No. 74, § 56.)

The Vermont Statutes Online

Title 21 : Labor

Chapter 019 : Vermont State Labor Relations Act

Subchapter 003 : Elections

(Cite as: 21 V.S.A. § 1583)

§ 1583. Powers of representatives

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. However, any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the bargaining representative has been given an opportunity to be present at such adjustment. (Added 1967, No. 198, § 10.)

Washington

RCW 41.56.080

Certification of bargaining representative—Scope of representation.

The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his or her grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

[2012 c 117 § 84; 1975 1st ex.s. c 296 § 19; 1967 ex.s. c 108 § 8.]

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6229

Chapter 250, Laws of 2018

65th Legislature
2018 Regular Session

EXCLUSIVE BARGAINING REPRESENTATIVES--NEW EMPLOYEE ACCESS

EFFECTIVE DATE: June 7, 2018

Passed by the Senate February 12, 2018
Yeas 27 Nays 20

KAREN KEISER

President of the Senate

Passed by the House February 27, 2018
Yeas 58 Nays 40

FRANK CHOPP

Speaker of the House of Representatives

Approved March 23, 2018 9:22 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6229** as passed by Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

March 26, 2018

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6229

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2018 Regular Session

By Senators Van De Wege, Chase, Conway, Wellman, Hasegawa, Saldaña,
Keiser, Hunt, and Kuderer

Read first time 01/10/18. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to requiring employers to provide exclusive
2 bargaining representatives reasonable access to new employees for the
3 purposes of presenting information about their exclusive bargaining
4 representative; adding a new section to chapter 41.56 RCW; adding a
5 new section to chapter 28B.52 RCW; adding a new section to chapter
6 41.59 RCW; adding a new section to chapter 41.76 RCW; adding a new
7 section to chapter 41.80 RCW; adding a new section to chapter 47.64
8 RCW; and adding a new section to chapter 49.39 RCW.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.56
11 RCW to read as follows:

12 (1)(a) The employer must provide the exclusive bargaining
13 representative reasonable access to new employees of the bargaining
14 unit for the purposes of presenting information about their exclusive
15 bargaining representative to the new employee. The presentation may
16 occur during a new employee orientation provided by the employer, or
17 at another time mutually agreed to by the employer and the exclusive
18 bargaining representative.

19 (b) No employee may be mandated to attend the meetings or
20 presentations by the exclusive bargaining representative.

21 (c) "Reasonable access" for the purposes of this section means:

(i) The access to the new employee occurs within ninety days of the employee's start date within the bargaining unit;

(ii) The access is for no less than thirty minutes; and

(iii) The access occurs during the new employee's regular work hours at the employee's regular worksite, or at a location mutually agreed to by the employer and the exclusive bargaining representative.

(2) Nothing in this section prohibits an employer from agreeing to longer or more frequent new employee access, but in no case may an employer agree to less access than required by this section.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.52 RCW to read as follows:

Section 1 of this act applies to this chapter.

NEW SECTION. **Sec. 3.** A new section is added to chapter 41.59 RCW to read as follows:

Section 1 of this act applies to this chapter.

NEW SECTION. **Sec. 4.** A new section is added to chapter 41.76 RCW to read as follows:

Section 1 of this act applies to this chapter.

NEW SECTION. **Sec. 5.** A new section is added to chapter 41.80 RCW to read as follows:

Section 1 of this act applies to this chapter.

NEW SECTION. **Sec. 6.** A new section is added to chapter 47.64 RCW to read as follows:

Section 1 of this act applies to this chapter.

NEW SECTION. **Sec. 7.** A new section is added to chapter 49.39 RCW to read as follows:

Section 1 of this act applies to this chapter.

Passed by the Senate February 12, 2018.
Passed by the House February 27, 2018.
Approved by the Governor March 23, 2018.
Filed in Office of Secretary of State March 26, 2018.

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