July 2015

Public Sector Collectice Bargaining in Ohio: Before and After Senate Bill No. 133

Steven B. Chesler

Shawn E. Smith

STUDENT PROJECT:

PUBLIC SECTOR COLLECTIVE BARGAINING IN OHIO: BEFORE AND AFTER SENATE BILL NO. 133

INTRODUCTION

ON JULY 6, 1983, Ohio joined thirty-nine other states[1] when Governor Richard F. Celeste signed into law Senate Bill No. 133.[2] This important legislation, which will govern[3] collective bargaining for public employees, closely resembles the National Labor Relations Act,[4] which has protected the organizational rights of private sector employees since 1935.

Prior to this new legislation, Ohio utilized an *ad hoc* approach to dealing with public sector labor issues. In an attempt to remedy this ineffective approach, Senate Bill No. 222[5] was introduced to the 112th Ohio General Assembly Regular Session for 1977. While this bill was passed by both houses of the General Assembly, it was ultimately vetoed by then Governor James A. Rhodes in 1978.

When 1983 ushered in a new administration more sensitive to the glaring absence of such legislation, the passage of a comprehensive public employees' collective bargaining law was clearly imminent. This article will examine the inadequacies of Ohio's law prior to the enactment of Senate Bill No. 133; summarize the provisions of this new statute; and note its impact on public employees and their employee organizations.

I. STATUS OF OHIO PUBLIC SECTOR LABOR LAW PRIOR TO SENATE BILL 133

Before the passage of Senate Bill No. 133, Ohio public sector labor law was regulated primarily by the courts under the Ferguson Act,[6] which prohibited

[1]Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, Wisconsin, and Wyoming. *See,* LEWIS & SPIRN, OHIO COLLECTIVE BARGAINING LAW 129-30 (1983).

[2]S. 133, 115th Gen. Ass'y, Reg. Sess. 1 (1983-84) enacting OHIO REV. CODE ANN. §§ 4117.01-4117.23, the Public Employee Collective Bargaining Act (hereinafter referred to as "the Act"), 1983 Legis. Bull. 1119 (Anderson), (to be codified at OHIO REV. CODE ANN. §§ 4117.01-4117.23).

[3]While portions of this Act became effective on October 6, 1983, most provisions will not become effective until April 1, 1984.

[4]29 U.S.C. §§ 151-168 (1976).

[5]S. 222, 112th Gen. Ass'y, Reg. Sess. 1 (1977-78)

[6]OHIO REV. CODE ANN. §§ 4117.01-.05 (Page 1980).

strikes by public employees. Court decisions on public-sector labor law have been confined to three major areas: the authority of public employers to enter valid collective bargaining contracts; union recognition and security; and the right of public employees to strike.

A. *Authority of Public Employers to Contract*

The Ohio Supreme Court rendered its first major decision concerning the authority of public employers to contract in 1947. In *Hagerman v. Dayton,*[7] the court struck down a Dayton city ordinance allowing the director of finance to make payroll deductions for union dues, provided the employee authorized the deduction. The court, however, did not limit itself to the dues deduction issue, stating that "labor unions have no function which may be discharged in connection with civil service appointees."[8] The rationale for this statement was that "[t]he laws of this state . . . cover fully all questions of wages, hours of work and conditions of employment affecting civil service appointees . . . . The law provides for the election and appointment of officials whose duties would be interfered with by the instrusion of outside organizations."[9]

Hagerman came to be interpreted as holding that any contract made between a public agency and a union representing its employees would be an unlawful delegation of the agency's authority.[10] Lower courts also relied on *Hagerman* to invalidate collective bargaining agreements in public employment and to foreclose the use of binding interest arbitration.[11] It was not until 1973 that an appellate court broke away from *Hagerman.* In *Youngstown Education Association v. Board of Education,*[12] the Mahoning County Court of Appeals found implied statutory authority for collective bargaining:[13]

> It is the established law in Ohio that in the absence of any specific grant of power by the constitution or laws of the state or charter of the municipality, a municipality or any subdivision thereof is without authority to enter into a binding collective bargaining agreement with any union or organization of employees. (citations omitted)
>
> In 1959 the legislature enacted R.C. 9.41, which provides in part as follows:

---

[7] 147 Ohio St. 313, 71 N.E.2d 246 (1947).

[8] *Id.* at 328-29, 71 N.E.2d at 254.

[9] *Id.*

[10] *See, e.g.,* City of Cleveland v. Division 268, 41 Ohio Op. 236, 90 N.E.2d 711 (C.P. Cuy. Co. 1949); *See also,* Ohio Civil Service Employees' Ass'n. v. Division 11, 28 Ohio Misc. 153, 272 N.E.2d 919 (C.P. Tusc. Co. 1970).

[11] *See,* Xenia Bd. of Educ. v. Xenia Educ. Ass'n., 52 Ohio App. 2d 373, 370 N.E.2d 756 (1977); Trotwood Teachers Ass'n. v. Board of Educ., 52 Ohio App. 2d 39, 367 N.E.2d 1233 (1977).

[12] 36 Ohio App. 2d 35, 301 N.E.2d 891 (1973). Actually the first erosion of *Hagerman* is found in the dissenting opinion of Foltz v. Dayton, 27 Ohio App. 2d 35, 272 N.E.2d 169 (1970) (Kerns, J., dissenting).

[13] OHIO REV. CODE ANN. § 9.41 (Page 1978) which provides in pertinent part: "[t]he state of Ohio and any of its political sub-divisions or instrumentalities may check off on the wages of public employees for the payment of dues to a labor organization or other organization of public employees upon a written authorization by the public employee."

". . . the state of Ohio and any of its political subdivisions or instrumentalities may checkoff on the wages of public employees for the payment of dues to a labor organization or other organization of public employees upon written authorization by the public employee."

We hold that R.C. 9.41 authorizes a board of education to enter into a binding collective bargaining agreement with an association of school teachers, but that such collective bargaining agreement is limited by applicable statutes.[14]

In *North Royalton Education Association v. Board of Education*[15] the Cuyahoga County Court of Appeals held that although no statute specifically authorized public employers to bargain, they did possess the option, but not the duty, to engage in collective bargaining. The court expressly rejected the *Hagerman* rationale that public sector bargaining would conflict with civil service laws in the area, stating:

[N]o Ohio statute specifically prohibits, allows, or compels [public sector bargaining]. Thus, the appellee has no duty to bargain collectively to establish terms and conditions for its employees but this does not foreclose the questions whether it *may* bargain and what its responsibilities are if it *does* negotiate a collective bargaining agreement. . . .

[W]hile a collective agreement could not overturn or modify either a statutory civil service standard or a valid regulatory scheme under such a statute, collective bargains can anticipate and take account of existing law so as not to conflict with it.[16]

In 1975 the Supreme Court of Ohio, in *Dayton Classroom Teachers Association v. Dayton Board of Education,*[17] issued a benchmark decision in public sector labor law. The court's syllabus states "[a] board of education is vested with discretionary authority to negotiate and to enter into a collective bargaining agreement with its employees, so long as such agreement does not conflict with or purport to abrogate the duties and responsibilities imposed upon the board of education by law."[18] The court reasoned that since the board was empowered to manage and control the school district and had authority to enter employment contracts, there was nothing unlawful about the board entering a valid collective bargaining contract.[19]

---

[14]Youngstown Educ. Ass'n. v. Board of Educ., 36 Ohio App. 2d 35, 42-43, 301 N.E.2d 891, 896-97 (1973) (Lynch, J., concurring).

[15]41 Ohio App. 2d 209, 325 N.E.2d 901 (1974).

[16]*Id.* at 215-16, 325 N.E.2d at 906-07 (emphasis in original).

[17]41 Ohio St. 2d 127, 323 N.E.2d 714 (1975).

[18]*Id.*

[19]It should be emphasized that this decision recognized a discretionary authority to bargain. There is nothing, however, requiring a school board to bargain with its employees.

The Ohio Supreme Court reaffirmed this position in *Civil Service Personnel Association v. Akron,*[20] stating, "[t]his court has recently recognized the right of public employees, under appropriate circumstances, to bargain collectively."[21] What constituted "appropriate circumstances" was explained in *Loveland Education Association v. Loveland Board of Education,*[22] where the court was faced with the issue of whether a recognition agreement outlining procedures to be followed when negotiating a collective bargaining agreement was valid or an unlawful delegation of authority. Based on the absence of a requirement that the parties reach agreement, the court ruled there was no unlawful delegation, stating:

> [T]here is a conspicuous absence of any language that could be construed to require the parties to reach a final agreement. The limited extent of the undertaking on behalf of the school board is set forth in Article IV, which states:
>
> > "This recognition constitutes an agreement between the Board and the Association to *attempt to reach* mutual understandings. . . ." [emphasis added by court]
>
> In conclusion, a recognition agreement, voluntarily executed by a board of education and a teachers association, . . . , is valid and enforceable, so long as such agreement does not conflict with or purport to abrogate the duties and responsibilities imposed upon a board of education by law.[23]

In spite of these cases granting public employees, or at least teachers, the right to enter a binding labor agreement with a public employer, there are cases which deny this right. *AFSCME, Local 1045 v. Polta*[24] was a case in which the Erie County Court of Appeals held that a county engineer lacked authority to enter a binding collective bargaining agreement. The court distinguished *Dayton Teachers* on the grounds that school boards were statutorily authorized to enter employment contracts and to bind the school district whereas only the County Commissioners were authorized to bind the county to a contract.[25] The court held that "[i]n the absence of statutory authority for a county engineer to enter into or bind the county to a collective bargaining agreement, the county engineer has no authority to bind his office or the county to such an agreement."[26]

These cases clearly illustrated that an Ohio public employer could enter a valid collective bargaining agreement with an employee representative.

[20] 48 Ohio St. 2d 25, 356 N.E.2d 300 (1976).

[21] *Id.* at 28, 356 N.E.2d at 302.

[22] 58 Ohio St. 2d 31, 387 N.E.2d 1374 (1979).

[23] *Id.* at 36, 387 N.E.2d at 1377. This reasoning was also used to invalidate the use of interest arbitration clauses. *See supra* note 11.

[24] 59 Ohio App. 2d 283, 394 N.E.2d 310 (1977).

[25] *Id.* at 284-85, 394 N.E.2d at 312.

[26] *Id.* at 284, 394 N.E.2d at 311.

However, this power has been discretionary; the public employer has had no duty to recognize or negotiate with the employee representative. Ohio's new public sector labor law will do much to solve the problems remaining in the area of who may enter and bind the public employer to a collective bargaining agreement.

B. *Union Security*

Although Ohio's new public sector labor law devotes considerable attention to union recognition and security[27] there is currently a dearth of opinions on the subject. Notwithstanding this lack of judicial guidance, many public employers presently recognize and bargain with employee representatives.[28] Problems seem to arise, however, when the employee representative attempts to have the employer deduct dues from employees' paychecks or when a competing organization seeks to displace the incumbent representative.[29]

In *Ohio Association of Public School Employees v. Cleveland Board of Education*[30] the Cuyahoga County Court of Appeals held that an election to displace an incumbent employee representative was inappropriate unless it is shown that the existing representative's interest is "clearly and convincingly foreign" to those of the employees it represents.[31] The court, however, did not specify what would constitute clear and convincing evidence of a lack of common interest. The opinion stated that if there was the requisite showing a court could use its equity powers to order a representation election.[32]

Once a representative is chosen or recognized it must collect dues from all members of the bargaining unit in order to pay the costs related to collective bargaining. Before the Ohio General Assembly enacted Ohio Revised Code Section 9.41 authorizing dues checkoff in the public sector,[33] attempts to allow a checkoff were rejected by the courts. In *Hagerman v. Dayton,*[34] the court stated that any use of dues checkoff was inconsistent with the state's civil service laws and violated the policy against assignment of wages.[35]

---

[27]*See* 1983 Ohio Legis. Bull. 1128-1130 (Anderson) (to be codified at OHIO REV. CODE ANN. §§ 4117.05-.07). These sections deal with the determination of the proper bargaining unit and the selection of its representative.

[28]It is evident from the previous discussion of Dayton Classroom Teachers Ass'n v. Board of Educ., 41 Ohio St. 2d 127, 323 N.E.2d 714 (1975) that if a public employer can enter a valid collective bargaining agreement it can certainly recognize the employee representative with which it is bargaining. *See supra,* note 17.

[29]Although these were the only two areas disclosing any cases, there have undoubtedly been numerous questions regarding this area. With no judicial or legislative guidance, public sector labor law in Ohio raises many issues regarding standing and the courts' power and ability to fashion remedies.

[30]69 Ohio App. 2d 101, 430 N.E.2d 1335 (1980).

[31]*Id.* at 104, 430 N.E.2d at 1338.

[32]With no legislative guidance in this area there is no way of knowing what percentage of employees in a bargaining unit must dissent before a court will order an election. There is no equivalent, for instance, to Sectoin 9 of the National Labor Relations Act, 29 U.S.C. § 159 (1976).

[33]OHIO REV. CODE ANN. § 9.41 (Page 1978). *See supra,* note 8.

[34]147 Ohio St. 313, 71 N.E.2d 246 (1947).

[35]*Id.* at 327, 71 N.E.2d at 253.

While Revised Code Section 9.41 nullified this portion of *Hagerman,* other problems were created. In *Foltz v. Dayton*[36] the Montgomery County Court of Appeals struck down a local civil service rule which required the public employer to discharge an employee for failure to pay union dues or service charge. Such a rule, the court reasoned, was a local police regulation in conflict with the general laws of Ohio relating to civil service and thus was invalid.[37] It should also be noted that even under Revised Code Section 9.41 the employee's written authorization was required before any checkoff could be made.[38]

This position, however, was effectively reversed in *Jefferson Area Teachers Association v. Lockwood,*[39] wherein the Ohio Supreme Court upheld a service charge of $83.13 to a member of the bargaining unit who was not a member of the association. This service fee was charged in accordance with the association's collective bargaining agreement with the school board. Although there is a lack of rationale in the opinion, the court permitted the association to "assess and collect from appellant the service fee established under the agreement."[40] The dissenting opinion by Justice Holmes reasoned that since the Ohio Revised Code required written authorization from the employee before checkoff deductions could be made, any provision requiring more was invalid.[41] Since this provision allowed the assessment of a charge and its deduction from the employee's paycheck without this authorization, the provision was invalid.[42]

Ohio courts have also held that a public employer may recognize and grant dues checkoffs to some unions and yet not grant them to any new employee representatives. In *State ex rel. Civil Service Employees Association v Stackhouse*[43] the court stated that the Ohio Revised Code grants the public employer discretion in determining which classes of employees and unions it will grant dues checkoff privileges. Further, the court held that "where a public employer withholds the granting of checkoff privileges from those unions, and their employee-members, with whom it has never negotiated labor agreements or memoranda, equal protection is not, as a result, offended."[44]

C. *Strikes by Public Employees*

The right of public employees to strike is the one area of public sector labor law given statutory attention in the past. The Ferguson Act[45] contains a clear and unequivocal mandate against strikes by public employees. The act

[36]27 Ohio App. 2d 35, 272 N.E.2d 169 (1970).

[37]*Id.* at 42, 272 N.E.2d at 173.

[38]OHIO REV. CODE ANN. § 9.41 (Page 1978).

[39]69 Ohio St. 2d 671, 433 N.E.2d 604 (1980) *cert denied* 103 S.Ct. 27 (1982).

[40]*Id.* at 674, 433 N.E.2d at 606.

[41]*Id.* at 675, 433 N.E.2d at 607 (Holmes, J., dissenting).

[42]*Id.*

[43]1 Ohio App. 3d 121, 439 N.E.2d 936 (1981).

[44]*Id.* at 124, 439 N.E.2d at 939.

[45]OHIO REV. CODE ANN. §§ 4117.01-.05 (Page 1980).

defines "strike"[46] and "public employee"[47] and sets forth penalties for violations of the Act. The penalties include termination from employment[48] and prohibition from reaping the benefits of an illegal strike.[49]

Perhaps the most interesting aspect of the Ferguson Act is the requirement that a public employer must notify an employee that he is on strike before a violation can occur.[50] The practical effect of this requirement is that the public employer has discretion to decide whether a strike exists.[51] The Supreme Court of Ohio considered this question in *Cincinnati v. Cincinnati District Council*[52] and held that notice to the employee that he or she is on strike was required before any of the Act's sanctions could be imposed.[53] In recent years use of the Ferguson Act has been almost nonexistent. According to one commentator there are several reasons for this:

> One is that the public employee has become painfully cognizant of his counterpart in the private sector who has been given legal protection of his right to join labor organizations and to withhold his services under appropriate conditions . . . . Another factor to be considered is that the penalties for engaging in strikes are rarely imposed by the public employer. The mightiest weapon in the public employer's arsenal is the right to discharge employees who strike but the obvious impracticality of replacement dictates its infrequent use.[54]

D. *Summary*

It appears that Ohio public employees have had the right to organize and enter a valid collective bargaining agreement with their employer if their employer decided to follow this course of action. The choice has been completely voluntary; the public employer has had no duty to recognize and bargain with its employees. Similarly, there has been no duty on the employer to deduct dues for the selected employee representative. Further, a strike, the ultimate bargaining tool, is at least technically unavailable to an employee organization. Because Ohio law had not remedied these inadequacies nor even addressed other numerous problems, the Ohio General Assembly enacted Ohio's Public Employee Collective Bargaining Act.[55]

---

[46] *Id.* at § 4117.01(A).

[47] *Id.* at § 4117.01(B).

[48] *Id.* at § 4117.05.

[49] *Id.* at § 4117.03. For example, an employee cannot receive a raise for one year after an illegal strike. *Id.* at § 4117.03(B).

[50] *Id.* at § 4117.04.

[51] *E.g.*, Markowski v. Backstrom, 10 Ohio Misc. 139, 226 N.E.2d 825 (1967). *See,* Bloch, *Public Employees' Right to Strike,* 18 CLEVE.-MAR. L. REV. 392 (1969); Hoffman & Newman, *Public Employee Strikes in Ohio: The Ferguson Act Reconsidered,* 5 AKRON L. REV. 203 (1972); Note, *Ohio Public Sector Labor Relations Law: A Time for Reevaluation and Reform,* 42 U. CIN. L. REV. 679 (1973).

[52] 35 Ohio St. 2d 197, 299 N.E.2d 686 (1973).

[53] *Id.*

[54] Hoffman & Newman, *supra* n.51, at 205.

[55] *See supra* note 2.

This Act will have substantial impact on the manner in which almost all public employers in Ohio conduct their labor relations. For those public employers currently bargaining with their employees, it will significantly change the way in which negotiations are to be conducted. For those public employers not currently bargaining with their employees, the Act creates a mechanism for employee organizations to gain recognition and delineates the manner in which negotiations are to be conducted.

II. THE NEW OHIO PUBLIC EMPLOYEE COLLECTIVE BARGAINING ACT

A. *The State Employee Relations Board*

Under the Public Employee Collective Bargaining Act the State Employment Relations Board[56] will administer public sector labor relations in Ohio.[57] Since its duties and powers are defined in broad terms this agency is one of the most powerful ever created by any Ohio statute.

SERB is made up of three members, no more than two of whom may belong to the same political party.[58] Initially, the terms of office are to be staggered for a three year period; thereafter, the terms of office are for six years.[59] The Governor is to appoint one member to be the Chair of the Board[60] and all members may be reappointed.[61] Finally, the only qualification for a Board member is that he or she be "knowledgeable."[62]

SERB may hire, without limitation, a wide variety of employees: an Executive Director, attorneys, trial examiners, mediators, arbitrators, members of fact-finding panels, directors for local areas, and "other employees as it finds necessary."[63] SERB may also utilize other agencies and is permitted to contract with the Federal Mediation and Conciliation Service (FMCS) for its various services.[64] All full-time employees of the Board (except the Executive Director, the head of the Mediation Bureau, and personal secretaries and assistants of Board members) are in the classified service.[65]

In addition to overseeing representation hearings and unfair labor practice proceedings, SERB has many other functions. It is required to create a Bureau of Mediation and to publish panels of qualified persons to serve as

[56]Hereinafter referred to as "SERB".

[57]1983 Ohio Legis. Bull. 1124 (Anderson) (to be codified at OHIO REV. CODE ANN. § 4117.02). This section became effective on October 6, 1983.

[58]*Id.*

[59]*Id.*

[60]*Id.*

[61]*Id.* (to be codified at OHIO REV. CODE ANN. § 4117.02(D)).

[62]*Id.* (to be codified at OHIO REV. CODE ANN. § 4117.02(A)).

[63]*Id.* at 1125 (to be codified at OHIO REV. CODE ANN. §§ 4117.02(E) and (F)). Note that there is no limit placed on the Board regarding the number of employees it may employ.

[64]*Id.* (to be codified at OHIO REV. CODE ANN. § 4117.02(E)).

[65]*Id.* These employees shall therefore be compensated pursuant to OHIO REV. CODE ANN. § 124 *et seq.* (Page 1978).

members of fact-finding panels (SERB decides who is "qualified");[66] conduct studies of problems involved in representation matters and collective bargaining for recommendation to the Legislature;[67] train representatives "of employee organizations and public employers" in collective bargaining procedures (seemingly contradictory tasks);[68] make studies and analyses of, and act as a clearinghouse of information for, data relating to collective bargaining in its widest interpretation;[69] and make available to employee organizations, public employers, mediators, and others statistical data relating to wages, benefits, and other employment practices in the public sector.[70]

SERB also has extensive monitoring responsibilities. All labor organizations are required to file reports with SERB[71] which include names and addresses of representatives, a description of the public employees whom the organization seeks to represent, the amounts of initiation fees and monthly dues, a financial report, the constitution and by-laws of the organization, and other relevant data.[72] The failure of an employee organization to register or file could result in SERB's withholding certification.[73]

Although SERB is the principal agency created by the statute, there are others. The first is a Bureau of Mediation which is empowered to establish panels of fact-finders and arbitrators.[74]

The second is an Office of Collective Bargaining in the Department of Administrative Services,[75] which has a broad charter to negotiate with state agencies with two exceptions: (1) the Office may not negotiate on behalf of other statewide elected officials; and (2) the Office may not negotiate on behalf of boards of trustees of institutions of higher learning.[76] However, the Office "may negotiate on behalf of these officials or trustees where authorized by the officials or trustees."[77] The Office is also charged with assisting the Director of Administrative Services in "formulating management's philosophy for public collective bargaining," conducting negotiations, coordinating the State's resources in mediation, fact-finding and arbitration, conducting reviews of collective bargaining agreements, and coordinating "data by all agencies."[78]

---

[66] 1983 Ohio Legis. Bull. 1125 (Anderson) (to be codified at OHIO REV. CODE ANN. § 4117.02(H)(1)).

[67] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.02(H)(2)).

[68] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.02(H)(4)).

[69] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.02(H)(5)).

[70] *Id.* at 1126 (to be codified at OHIO REV. CODE ANN. § 4117.02(H)(6)).

[71] *Id.* at 1143 (to be codified at OHIO REV. CODE ANN. §§ 4117.19(A) and (B)).

[72] *Id.*

[73] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.19(E)).

[74] *Id.* at 1124 (to be codified at OHIO REV. CODE ANN. § 4117.02(H)(1)).

[75] *Id.* at 1133 (to be codified at OHIO REV. CODE ANN. § 4117.10(D)).

[76] *Id.*

[77] *Id.*

[78] *Id.*

Lastly, there is a Public Employment Advisory and Counseling Effort Commission.[79] This Commission is required to submit reports to the Governor and the Legislature concerning the implementation of the Act.[80] It will cease to exist on April 1, 1986.[81]

B. *Coverage of the Act*

The Act broadly defines public employers to mean the State and its political subdivisions, including municipal corporations with populations of at least 5,000; counties; townships with populations of at least 5,000; school districts; state institutions of higher learning; public or special districts; and finally, any state agencies, authorities, commissions or boards.[82]

The Act also accords a broad definition to public employees which includes any person holding a position with a public employer, as defined above.[83] It is important to note that this Act is also designed to cover those private employees over whom the National Labor Relations Board has declined jurisdiction because they are working pursuant to a contract between a public employer and a private employer and are thus deemed employees of a public employer.[84]

Under the Act, a number of categories of employees are specifically excluded from the general definition of "public employee." These are: (1) persons holding elected office; (2) legislative employees; (3) staff of the Governor or chief executive of an employer whose principal duties directly relate to the performance of the executive function of the Governor or other chief executive; (4) members of the militia while on active duty; (5) employees of SERB; (6) confidential employees, defined in the Act as any employee who works directly or indirectly in the function of collective bargaining; (7) management level employees; (8) employees and officers of the courts, assistants to the Attorney General, assistant prosecuting attorneys, and employees of the clerks of courts who perform a judicial function; (9) employees who act in a fiduciary capacity appointed pursuant to Ohio Revised Code Section 124.11; (10) supervisors, who are defined as individuals who have authority to hire, transfer, suspend lay off, recall, promote, discharge, assign, reward or discipline other public employees, with certain specific exceptions enumerated in the statute; (11) students whose primary purpose is educational training; (12) employees of county boards of elections; (13) seasonal and casual employees as determined by SERB; and (14) part-time faculty members of a state institution of higher learning.[85]

Lastly, the Act governs any union, referred to as an "employee organiza-

[79]Public Employee Collective Bargaining Act § 7, 1983 Ohio Legis. Bull. 1146-47 (Anderson).

[80]*Id.*

[81]*Id.*

[82]1983 Ohio Legis. Bull. 1121 (to be codified at OHIO REV. CODE ANN. § 4117.01(B)).

[83]*Id.* at 1122 (to be codified at OHIO REV. CODE ANN. § 4117.01(C)).

[84]*Id.*

[85]*Id.*

tion," in which public employees participate.[86] To constitute an employee organization within the meaning of the Act, the union must deal in whole or in part with public employees' grievances, labor disputes, wages, hours, or terms and conditions of employment.[87]

C. *Recognition*

An employee organization may become an employee group's exclusive representative through voluntary recognition by the public employer followed by certification by SERB.[88] The organization requesting recognition must submit credible evidence to the employer, with a copy to SERB, that a majority of the employees in the bargaining unit desire to be represented by the organization.[89] The employer must immediately either request an election to verify the evidence or proceed with the voluntary recognition procedure specified by the Act.[90]

SERB will certify the employee organization as the exclusive representative only if: (1) the employer has not petitioned for an election; (2) there is no substantial evidence that a majority of the employees do not want to be represented by the organization; (3) there is no substantial evidence that at least ten percent of the employees wish to be represented by another employee organization; or (4) there is no substantial evidence that the proposed unit is inappropriate.[91] Upon gaining recognition, the employee organization retains exclusive representative status for one to three years.[92]

A second way for an employee organization to become an exclusive representative is for an employee or the organization to file an election petition.[93] This petition must allege that at least thirty percent of the employees in a unit wish to be represented or that the existing union no longer represents a majority of employees in the unit.[94] Upon receipt of the petition, SERB is required to hold a hearing if it has reasonable cause to believe that a question of representation exists.[95]

---

[86] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.01(D)).

[87] *Id.*

[88] *Id.* at 1128 (to be codified at OHIO REV. CODE ANN. § 4117.05 (A)(2)).

[89] *Id.*

[90] *Id.*

[91] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.05(A)(2)(b)).

[92] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.05(B)). This section also provides that a contract which already exists between a public employer and an employee representative will prohibit the recognition of a rival organization for a period of three years or for the term of the contract, whichever is longer. This is known as the contract bar rule and while it is discretionary in the private sector, it has been applied in the same manner. *See* Hershey Chocolate Corp., 121 N.L.R.B. 901 (1958).

[93] 1983 Ohio Legis. Bull. 1128 (to be codified at OHIO REV. CODE ANN. § 4117.05(A)(1)). An election petition need only allege a thirty percent employee interest, whereas a request for recognition under § 4117.05(A)(2) requires the interest of a majority of the employees. *See* 1983 Ohio Legis. Bull. 1129-30 (to be codified at OHIO REV. CODE ANN. § 4117.07(A)).

[94] *Id.* at 1129 (to be codified at OHIO REV. CODE ANN. § 4117.07(A)(1)).

[95] *Id.* The parties may waive a hearing and agree to hold an election.

If SERB finds that such a question exists, it must order a secret ballot election.[96] However, an election may not be held during the term of a lawful labor agreement.[97] Moreover, where a collective bargaining agreement is in effect, the Act specifically requires that employees file election petitions only during the period extending from 120 to 90 days before the agreement expires or after the agreement expires and before a new agreement becomes effective.[98]

One of the crucial elements in the recognition process is a determination of the appropriate bargaining unit. Under the Act, SERB makes the final conclusive and non-appealable determination as to what constitutes the appropriate bargaining unit.[99] In fashioning an appropriate unit, SERB is required to consider a series of factors, including the desires of the employees, their community of interests, wages, hours, the effects of over-fragmentation of units, the efficiency of operation, the administrative structure of the public employer, and the employer's history of collective bargaining.[100] Since the first factor is the desires of the employees, it would be reasonable to assume that an employee organization will usually be able to obtain the unit it desires. However, the Act includes specific prohibitions which control bargaining unit composition and therefore somewhat control employees' "desires."[101]

D. *Negotiations*

When SERB notifies a public employer that it has certified an employee organization as the exclusive representative of an appropriate unit, the public employer must designate a representative for negotiations and notify SERB and the organization of this representative's name and address.[102] The Act does not restrict the public employer's choice of a representative, except that the employer may not designate a person who is a member of the employee organization with which the public employer is bargaining, or who has an interest in the negotiations which would conflict with the interest of the public employer.[103]

The Act imposes an elaborate timetable on negotiations and contains a variety of dispute resolution mechanisms. In the case of initial negotiations, either party may serve notice on SERB and on the other party offering to meet

[96] *Id.* at 1130 (to be codified at OHIO REV. CODE ANN. § 4117.07(C)).

[97] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.07(C)(6)).

[98] *Id.*

[99] *Id.* at 1129 (to be codified at OHIO REV. CODE ANN. § 4117.06(A)). The fact that this unit determination is to be non-appealable could cause problems in the future. In *Indiana Education Employment Relations Bd. v. Benton Community School Corp.*, 266 Ind. 491, 365 N.E.2d 752 (1977), an Indiana court found that a similar provision in that state's public employee labor legislation violated the due process guarantees of the Indiana Constitution.

[100] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.06(B)).

[101] *Id.* (to codified at OHIO REV. CODE ANN. § 4117.06(D)). These prohibitions include joining guards or correction officers with other employees; police or fire department personnel with other employees; psychiatric attendants at mental health facilities with other employees; or the employees at one institution of higher learning with those of anothers.

[102] *Id.* at 1127 (to be codified at OHIO REV. CODE ANN. § 4117.04(B)).

[103] *Id.* at 1144 (to be codified at OHIO REV. CODE ANN. § 4117.20(A)).

for ninety days to negotiate an agreement.[104] Where a collective bargaining agreement already exists, the party who desires to negotiate a new agreement is required to notify SERB and the other party not less than sixty days prior to the expiration date of the existing agreement.[105]

Bargaining must begin upon receipt of the notice.[106] If the parties cannot reach agreement at any time prior to forty-five days before the expiration of the collective bargaining agreement, they may submit the matter to a negotiated dispute settlement procedure which supersedes the procedures in the Act.[107]

The Act requires public employers to bargain collectively with the exclusive representative of their employees.[108] "To bargain collectively" is defined as the mutual obligation to negotiate in good faith with respect to wages, hours, or other terms and conditions of employment, as well as the continuation, modification or deletion of an existing provision of the collective bargaining agreement.[109] This section of the Act grandfathers in subjects already contained in existing agreements and imposes a duty to bargain regarding those subjects. The Act also requires bargaining about any "subjects reserved to management which affect wages, hours and terms and conditions of employment . . . ."[110]

The Act recognizes various management rights, such as the right to direct governmental operations and to hire, discipline and discharge employees.[111] These rights, however, may be voluntarily limited by the collective bargaining agreement.[112] It should be noted that the obligation to bargain collectively does not mean that either party is required to agree to a proposal or to make a concession.[113]

The Act requires that every collective bargaining agreement provide for a grievance procedure that may culminate in final and binding arbitration.[114] Matters which are the subject of a final and binding grievance procedure may not be reviewed by the State Personnel Board of Review or by civil service commissions.[115] Every agreement must also contain a provision requiring the public employer to deduct periodic dues, initiation fees and assessments of union

---

[104] *Id.* at 1138 (to be codified at OHIO REV. CODE ANN. § 4117.14(B)(2)).

[105] *Id.* at 1137 (to be codified at OHIO REV. CODE ANN. § 4117.14(B)(1)).

[106] *Id.* at 1138 (to be codified at OHIO REV. CODE ANN. § 4117.14(B)(4)).

[107] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.14(C)). If the parties have not agreed to a dispute settlement procedure, the one set forth in the Act shall apply.

[108] *Id.* at 1127 (to be codified at OHIO REV. CODE ANN. § 4117.04(B)).

[109] *Id.* at 1123 (to be codified at OHIO REV. CODE ANN. § 4117.01(G)). This duty does not require either party to agree to a proposal or make a concession.

[110] *Id.* at 1130-31 (to be codified at OHIO REV. CODE ANN. § 4117.08(C)(9)).

[111] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.08(C)(1)-(9)).

[112] *Id.*

[113] *Id.* at 1123 (to be codified at OHIO REV. CODE ANN. § 4117.01(G)).

[114] *Id.* at 1131 (to be codified at OHIO REV. CODE ANN. § 4117.09(B)(1)).

[115] *Id.* at 1132 (to be codified at OHIO REV. CODE ANN. § 4117.10(A)).

members upon written authorization by the employee.[116] Finally, each agreement is limited to a term of three years from the date of execution.[117]

An agreement may contain a provision which requires non-member unit employees to pay a fee to the union.[118] The agreement may not, however, contain a provision which requires a public employee to become a member of an employee organization as a condition for securing or retaining employment.[119]

One of the most important features of this new legislation is its impasse resolution mechanism. If the parties have not reached an agreement fifty days before the expiration of their agreement and do not have a negotiated dispute resolution procedure contained in their agreement, either party may request SERB to intervene.[120] SERB must appoint a mediator if an impasse exists or if forty-five days remain before the expiration of the current agreement.[121] If the mediator advises SERB that the parties have reached impasse or if only thirty-one days remain in the term of the agreement, SERB must appoint within one day a fact-finding panel of not more than three members selected by the parties.[122]

The fact-finding panel is required to gather facts and make recommendations for resolution of the dispute. This may be done through written position statements and hearings.[123] Until it has made a recommendation, the panel is restricted from discussing the matter with anyone other than the parties.[124] Its recommendations must be transmitted to the parties within fourteen days after appointment unless the parties agree to an extension.[125] The parties then have seven days to act on the recommendations, which are binding unless the public employer or the employee organization rejects the report by a three-fifths vote of its membership.[126] If either party rejects the report, SERB is required to publicize it.[127]

If the parties do not reach an agreement within seven days after the report

---

[116] *Id.* at 1131 (to be codified at OHIO REV. CODE ANN. § 4117.09(B)(2)).

[117] *Id.* at 1132 (to be codified at OHIO REV. CODE ANN. § 4117.09(D)).

[118] *Id.* at 1131 (to be codified at OHIO REV. CODE ANN. § 4117.09(C)).

[119] *Id.* The Act authorizes the collective bargaining agreement to contain an "agency shop" clause. Under this type of provision an employee is required to either join the union or pay the union a "fair share fee" which may not exceed the dues paid by members of the bargaining unit.

[120] 1983 Ohio Legis. Bull. 1138 (to be codified at OHIO REV. CODE ANN. § 4117.14(C)(2)).

[121] *Id.* Therefore, impasse is reached at either point.

[122] *Id.* at 1139 (to be codified at OHIO REV. CODE ANN. § 4117.14(C)(3)). The panel is only empowered to inquire into unresolved issues. This may discourage the resolution of issues for those parties who know they are headed towards impasse.

[123] *Id.* (to be codified at OHIO REV. CODE ANN. §§ 4117.14(C)(4) and (5)). Note that these methods are discretionary.

[124] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.14(C)(4)(f)).

[125] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.14(C)(5)).

[126] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.14(C)(6)).

[127] *Id.*

is published, or if the agreement has expired, then those public employees having the right to strike may do so.[128] However, the employee organization must give a ten-day prior written notice of strike to the public employer.[129]

Public employees who do not have the right to strike must submit the matter to "final offer settlement procedure," a form of final and binding arbitration established by the Act.[130] This procedure is mandatory for settling the disputes of those employees who do not have the right to strike.[131] Here SERB will order the parties to submit their disputes to a conciliator, chosen from a list of five "qualified" conciliators.[132] If the parties fail to select a conciliator within five days, the appointment is to be made by SERB.[133]

The conciliator is then required to hold a hearing and resolve the dispute.[134] In so doing, he is required to consider past collective bargaining agreements, settlements reached in comparable work, the interest and welfare of the public, the ability of the public employer to finance the proposed settlement, the lawful authority of the public employer, and other traditional factors examined by arbitrators.[135] The conciliator's awards are subject to judicial review,[136] but are otherwise binding upon the parties.[137]

E. *Strikes*

The Public Employee Collective Bargaining Act fundamentally changes the laws regarding strikes by public employees in Ohio. If a public employer believes that a strike is not authorized, it may notify SERB of the strike and request that it make a determination as to whether the strike is proper under the statute.[138] Such a determination must be made within seventy-two hours.[139] If the strike is found to be unauthorized, the public employer may remove or suspend employees one day after notification that the strike is not authorized.[140]

---

[128] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.14(D)(2)).

[129] *Id.*

[130] *Id.* at 1140 (to be codified at OHIO REV. CODE ANN. § 4117.14(G)(1)).

[131] *Id.* at 1139 (to be codified at OHIO REV. CODE ANN. § 4117.14(D)(1)). Those public employees who do not have the right to strike include: safety forces (police, fire, sheriff, highway patrol); dispatchers for safety and health forces; corrections officers; guards at penal and mental institutions; and employees of the state schools for the deaf or the blind. *Id.*

However, even those employees who have the right to strike may enter a binding agreement to follow the final offer settlement procedure. *Id.* at 1140 (to be codified at OHIO REV. CODE ANN. § 4117.14(E)).

[132] *Id.* at 1139 (to be codified at OHIO REV. CODE ANN. § 4117.14(D)(1)).

[133] *Id.*

[134] *Id.* at 1140-41 (to be codified at OHIO REV. CODE ANN. § 4117.14(G)). This section sets forth guidelines to be applied to final offer settlement proceedings. The conciliator is required to select, on an issue-by-issue basis, between each of the party's final settlement offers in order to resolve the dispute. *Id.* to be codified at OHIO REV. CODE ANN. § 4117.14(G)(7)).

[135] *Id.* (to be codified at OHIO REV. CODE ANN. §§ 4117.14(G)(7)(a)-(f)).

[136] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.14(H)).

[137] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.14(I)).

[138] *Id.* at 1144 (to be codified at OHIO REV. CODE ANN. § 4117.23(A)).

[139] *Id.*

[140] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.23(B)(1)).

If a striking employee returns to the same public employer, the following penalties may be assessed against him: his compensation shall not exceed that received by him prior to the time of the illegal strike; his compensation shall not be increased until the expiration of one year from his return;[141] and the public employer may deduct from his paycheck two days' wages for each day the employee remained on strike after receiving the notice that the strike was improper.[142] The Act does not permit a public employer to engage in a lock-out, a right recognized by federal law.[143] Another important difference between the new Ohio law and the federal labor relations law is the Ohio Act's silence on the question of whether a public employer is permitted to hire permanent replacements.[144]

F. *Unfair Labor Practices*

The Act proscribes various types of conduct labeled "unfair labor practices."[145] SERB has authority over charges of unfair labor practices, and it is required to investigate once a charge has been filed.[146] If SERB finds probable cause that the alleged violation occurred it is required to issue a complaint,[147] except that no complaint may be issued for conduct which took place more than ninety days prior to the filing of the charge.[148]

The charged party then has ten days to answer the complaint,[149] and a hearing is later held.[150] The hearing officer issues his findings and recommended order.[151] SERB may then issue a cease and desist order and require that the employer take affirmative action to remedy the unfair labor practice.[152] SERB's order may be reviewed or enforced in common pleas court, but court proceedings do not stay the SERB order unless specifically provided by the court.[153]

The above summary simply scratches the surface of this complex legislation. Within the next few months, SERB will issue rules and regulations and

[141] *Id.* (to be codified at OHIO REV. CODE ANN. §§ 4117.23(B)(2)(a) and (b)).

[142] *Id.* at 1144-1145 (to be codified at OHIO REV. CODE ANN. § 4117.23(B)(3). Public employees have the right to appeal these penalties to SERB, with the exception of the deduction of wages.

[143] In fact, under the new Ohio law a lock-out is defined as an unfair labor practice. *Id.* at 1134 (to be codified at OHIO REV. CODE ANN. § 4117.11(A)(7)).

[144] Hiring of permanent replacements is a frequently used method of discouraging employee strikes in the private sector.

[145] 1983 Ohio Legis. Bull. 1134 (to be codified at OHIO REV. CODE ANN. §§ 4117.11(A) and (B)). The Act sets forth eight employer unfair labor practices and eight employee organization unfair labor practices. *Id.*

[146] *Id.* at 1135 (to be codified at OHIO REV. CODE ANN. § 4117.12(A)).

[147] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.12(B)).

[148] *Id.*

[149] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.12(B)(1)).

[150] *Id.*

[151] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.12(B)(2)). The Board may rescind, modify or affirm the recommended order.

[152] *Id.* at 1136 (to be codified at OHIO REV. CODE ANN. § 4117.12(B)(3)).

[153] *Id.* (to be codified at OHIO REV. CODE ANN. § 4117.13).

establish procedures concerning the new law to aid in its implementation.

III. CONCLUSION

It has been estimated that there are 580,000[154] public employees in Ohio who will be affected by the long overdue Public Employee Collective Bargaining Act.[155] Adopting a "better late than never" attitude, Milan Marsh, President of Ohio's AFL-CIO, expressed labor's sentiment when he stated, "[t]his bill is a good faith effort to bring public employees' collective bargaining into the 20th century."[156] The new law will undoubtedly require many changes by both management and labor and it is still too early to predict what the effect of these changes will be. It is certain, however, that this is a positive development for both public employees and their representatives since it gives more than it takes.

Among the rights granted public employees are the rights to select an employee representative[157] and engage in collective bargaining with the public employer.[158] The law also places a corresponding duty on the employer to bargain with the chosen representative, a duty the public employer did not have prior to this legislation.[159] Also eliminated is the type of problem encountered in *AFSCME Local 1045 v. Polta,*[160] where a collective bargaining contract was struck down because a county engineer lacked authority to contract. Under the new law both sides are required to identify their authorized representative.[161]

With the public employees' right to representation now secure, it is necessary to dispel the unfounded fears of those citizens who listened unquestioningly to opponents of this bill. The most publicized fear is the effect of this new law on employees' right to strike.[162] The impact of granting this right to strike, however, has been greatly exaggerated. In fact, an involved procedure has been established whereby the employee organization and the public employer must choose among several settlement mechanisms.[163] It is only after the efforts

[154]The Cleveland Plain Dealer, July 7, 1983, at A7, col. 3.

[155]Ohio is the last major industrial state to enact a public sector labor law. There are only ten other states without some type of statutory scheme: Alabama, Arkansas, Colorado, Illinois, Mississippi, North Carolina, South Carolina, Virginia and West Virginia. *See* Brooking & Curtis, *A Comparative Analysis of the States' Public Sector Labor Relations Statutes,* 4 J. COLLECTIVE NEGOTIATIONS, 101 (1975).

[156]The Cleveland Plain Dealer, March 29, 1983, at A13, col. 1.

[157]1983 Ohio Legis. Bull. 1127-30 (to be codified at OHIO REV. CODE ANN. § 4117.03(A)(3) and 4117.04-.07.

[158]*See id.* at 1127, 1130-35 (to be codified at OHIO REV. CODE ANN. §§ 4117.03(A)(4), 4117.08-.10 and 4117.11(A)(5)).

[159]*See* Dayton Classroom Teachers Ass'n v. Board of Educ., 41 Ohio St. 2d 127, 323 N.E.2d 714 (1975) which established that although an employer could enter a valid collective bargaining contract it was under no duty to do so.

[160]59 Ohio App. 2d 283, 394 N.E.2d 310 (1977).

[161]1983 Ohio Legis. Bull. 1127 (to be codified at OHIO REV. CODE ANN. § 4117.04(B)).

[162]*See id.* at 1139-40 (to be codified at OHIO REV. CODE ANN. § 4117.14(D)(2)). *See, e.g.,* The Cleveland Plain Dealer, April 20, 1983 at A16, col. 1; The Cleveland Plain Dealer, March 30, 1983, at A12, col. 1; The Cleveland Plain Dealer, May 12, 1983, at B7, col. 1; The Cleveland Plain Dealer, April 22, 1983, at A1, col. 1.

[163]*See supra,* notes 102-137 and accompanying text.

of a fact-finding panel have failed that public employees have the right to strike,[164] with the exception of safety forces and institutional guards.[165]

In practicality, this means employees will have a better chance to negotiate a settlement before resorting to a strike. This effect was noted by the executive director of the Association of Public School Employees when he stated that this mechanism will "reduce the strike situation all over the State of Ohio."[166] Further, when a strike does occur, SERB must determine whether it has been authorized by the statute.[167] In the event that it is found to be unauthorized, there are penalties and injunctive relief available to the employer[168] which will no doubt prove an effective deterrent to unauthorized strikes.

The Act should also do much to bring certainty to the area of selection and retention of employee representatives.[169] The courts will no longer be permitted to make "seat of the pants" determinations regarding the election of these representatives.[170] Once an employee representative is certified, it is to be the exclusive representative for twelve months.[171] If a collective bargaining agreement is then entered into with the public employer, this grant of exclusivity extends through the life of the contract, but cannot exceed three years.[172]

Along with being given the right to administer the negotiated agreement, the employee organization will be allowed to have dues deducted from each member's paycheck. If, however, a member of the bargaining unit does not wish to join the selected representative, a "fair share fee" may still be collected.[173] The *quid pro quo* for this agreement is that the organization will be required to document how these monies are spent. Therefore, contrary to rumor, this bill does not force compulsory membership in any employee organization.[174]

A less attractive aspect of this bill is the increase in paperwork which it will cause. This is due to the fact that each employee representative is required to file reports with SERB, including an annual report, a copy of its constitu-

[164]1983 Ohio Legis. Bull. 1140 (to be codified at OHIO REV. CODE ANN. § 4117.14(D)(2)).

[165]*Id.* (to be codified at OHIO REV. CODE ANN. §§ 4117.14(D)(1) and (G)).

[166]The Cleveland Plain Dealer, May 21, 1983, at B6, col. 1.

[167]1983 Ohio Legis. Bull. 1144 (to be codified at OHIO REV. CODE ANN. § 4117.23).

[168]*See id.* at 1144 and 1142 (to be codified at OHIO REV. CODE ANN. §§ 4117.23 and 4117.16).

[169]*See* Ohio Ass'n. of Public School Employees v. Cleveland Bd. of Educ., 69 Ohio App. 2d 101, 430 N.E.2d 1335 (1980). This case points out the lack of clear standards for deciding representation cases. For instance, there is no mention of what percentage of employees in a bargaining unit must request a change of representation in order to constitute clear and convincing evidence. *See also,* Sebris, *Right to Collective Bargaining for All Public Employees: An Idea Whose Time Has Come,* 4 J. COLLECTIVE NEGOTIATIONS 297, 301 (1975).

[170]1983 Ohio Legis. Bull. 1127 (to be codified at OHIO REV. CODE ANN. § 4117.04(A)).

[171]*Id.*

[172]*Id.* at 1131 (to be codified at OHIO REV. CODE ANN. § 4117.09(B)).

[173]*See id.* (to be codified at OHIO REV. CODE ANN. § 4117.09(C)).

[174]*See* The Cleveland Plain Dealer, March 29, 1983, at A13, col. 1; *See also,* 1983 Ohio Legis. Bull. 1131 (to be codified at OHIO REV. CODE ANN. § 4117.09(C)) which allows conscientious objectors to contribute to certain charities in lieu of paying dues or a fair share fee.

tion and by-laws, and other relevant data.[175] The importance of this requirement is that failure to comply with it may result in SERB's withholdng certification.[176]

Prior to the passage of this legislation there were fears expressed that it would impose unaffordable wages on already financially strapped public employers.[177] This result is highly unlikely given the fact that the conciliators responsible for resolving impasses are *required* by the Act to consider the public employer's ability to pay.[178] Neither will it suddenly force tax hikes.[179] This is an unpersuasive argument which is revived by the opponents of every new and innovative piece of legislation.

These fears are further unsupported given the fact that many public employee groups are already organized.[180] Since they have not yet been realized, it is unimaginable that the implementation of this Bill will suddenly bring these fears to fruition. Conversely, the existence of these bargaining relationships underscore even further the need for a set of definitive rules.

While the new law is merely a skeleton at this point, SERB will add flesh as it promulgates rules. The true effort of this new law was recognized by Ohio Governor Richard F. Celeste when he signed the bill and declared:

> This is a new day for all of us — management and labor . . . . A new day because this legislation establishes clear and definite guidelines for how we conduct our business together . . . . Public employees will now have the same collective bargaining rights in very large measure that the private sector counterparts have enjoyed since 1935.[181]

While it is understandable that Ohio citizens are concerned with their immediate needs — safety, schools for their children, sanitation, and maintenance of public roads, to name a few — they cannot lose sight of the fact that the people who provide these services are entitled to have concise rules regulating their collective bargaining rights.

STEVEN B. CHESLER
SHAWN E. SMITH

---

[175] *Id.* at 1143 (to be codified at OHIO REV. CODE ANN. § 4117.19).

[176] *Id.*

[177] *See* The Cleveland Plain Dealer, April 20, 1983, at A16, col. 1.

[178] 1983 Ohio Legis. Bull. 1140-41 (to be codified at OHIO REV. CODE ANN. § 4117.14(G)(7)(c)).

[179] *See* The Cleveland Plain Dealer, April 20, 1983, at A16, col. 1.

[180] *See* The Cleveland Plain Dealer, March 30, 1983, at A12, col. 1.

[181] The Cleveland Plain Dealer, July 7, 1983, at A7, col. 1.