Commissioners Handbook
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CHAPTER 65

COLLECTIVE BARGAINING

Latest Revision
January 2023

65.01 INTRODUCTION

The passage of SB 133 of the 115th General Assembly on June 6, 1983 established collective bargaining in Ohio and created Chapter 4117 of the Ohio Revised Code. Only minor changes have occurred since. The law provides most public employees the right to organize, bargain for contracts and strike, except for police, deputy sheriffs firefighters, dispatchers, most EMS employees, and a handful of other employees who have binding arbitration in lieu of the right to strike.

65.02 KEY DEFINITIONS (O.R.C. 4117.01)

Public employer includes most public entities, including the State of Ohio, a county, any municipal corporation or with a population of at least 5,000, and any township with a population of at least 5,000 in the unincorporated area of the township.

Legislative Authority: In the county, each elected official is a public employer, while the board of county commissioners is the chief "legislative body," as stated in Section 4117.10 of the Revised Code, which accepts or rejects a proposed collective bargaining agreement for employers of County office holders (see section 65.09). For employees under the board of county commissioners, the commissioners are both the employer and the legislative body.

Public employees are employed by a public employer or are individuals working under a contract between a public and private employer over whom the National Labor Relations Board (NLRB) declines jurisdiction. The NLRB declines jurisdiction on the basis that the contract employees involved are employees of a public employer.

Public employees that are not covered by the “Collective Bargaining Act” are:

1. Elected officials.

2. Employees of the General Assembly or other legislative body whose principal duties are directly related to legislative functions.

3. Employees or the staff of the Governor or the chief executive's staff whose functions relate to the performance of executive duties.

4. Members of organized militia while in training or on active duty.

5. State Employment Relations Board (SERB) and State Personnel Board of Review (SPBR) employees.

6. Confidential employees, who are county personnel employees and deal with collective bargaining information with the public employer or their representative or who work in a close continuing relationship with public officials directly participating in collective bargaining. Note- This definition does not include all employees who may handle what is deemed to be confidential information. It has been interpreted to require work with collective bargaining on behalf of the public employer.

7. Management level employees who formulate and direct implementation of policy, assist in preparation of or administer collective bargaining agreements, or have a major role in personnel administration.

8. Employees and officers of the courts, assistants to the Attorney General, assistant prosecuting attorneys, and clerk of court employees who perform a judicial function.

9. Fiduciary employees, who are employed by and directly responsible to the county commissioners or other elected officials who hold an administrative position of trust that would be impractical to determine qualifications by competitive examination. (See O.R.C. 124.11(A)(9) exemptions).

10. Supervisors who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, direct, adjust grievances or effectively recommend such action to other public employees. (Such authority is not clerical in nature but requires independent judgment).

11. Students on educational internships or other students working part-time less than 50 percent of the normal year in the employees bargaining unit (which includes interns and part-time students).

12. County board of election employees.

13. Seasonal or casual employees as determined by SERB who are sporadically employed or employed seasonally as opposed to year-round.

14. Part-time faculty members of an institution of higher learning.

15. Participants in work activity, development activity, or alternate work activity not performed by other employees are not paid.

16. Certain ODOT employees.

17. Community based and district correctional facilities not subject to a union contract on June 1, 2005.

Collective bargaining is a mutual good faith obligation to negotiate with the intention of reaching an agreement between the public employer and union with designated representatives. Subjects to be bargained at reasonable times and places include wages, hours, terms and other conditions of employment, and the continuation, modification or deletion of an existing provision of a contract. There is no compulsion for either party to agree or make a concession. The definition of collective bargaining includes a great range of subjects. Very little is excluded from the bargaining table.

Strike is concerted action, which can be failing to report for work, willful absence, a work stoppage in whole or in part, or slowdown to influence change of wages, hours, terms and other conditions of employment. A good faith stoppage due to dangerous or unhealthful working conditions on the job is not a strike.

Picketing is permitted by public employees for informational purposes. Certain notice requirements are needed, including a 10-day written notice by the employees or the union (O.R.C. 4117.08.) Picketing is also permitted in the event employees strike a public employer.

65.03 THE STATE EMPLOYMENT RELATIONS BOARD (SERB) (O.R.C. 4117.02)

The State Employment Relations Board (SERB) is composed of three members, no more than two of whom may be of the same political party. They are appointed to six-year, staggered terms by the Governor. SERB is the administrative body that has ultimate jurisdiction over all labor relations for public employers in Ohio.

The State Personnel Board of Review (SPBR) (O.R.C. 124.03 and 124.05), which is also composed of three members of opposite political parties appointed by the Governor, still acts and rules on appeals for civil service employees not covered under a union contract. SPBR, for administrative purposes, is located within the SERB. SPBR decisions may not be appealed to SERB.

SERB's major responsibilities are:

1. Establish rules to administer the representation process and on collective bargaining negotiations.

2. Determine bargaining units (representation by unions) that are appropriate considering the desires of employees, the community of interest, wages, hours and

other working conditions, over-fragmentation, efficient operations, administrative structure of the county and history of collective bargaining (O.R.C. 4117.06).

3. Conduct representation elections by secret ballot, including mail-in ballots, giving not less than 10 days notice of the time and place (O.R.C. 4117.07).

4. Conduct investigations, hearings and rule on all unfair labor practice charges filed against the employer, employee or union (O.R.C. 4117.11-4117.13).

5. Determine negotiations, appoint mediators, fact finders, and conciliators in disputes between employers and unions; maintain a roster of arbitrators and fact finders (O.R.C. 4117.14), and may contract with the Federal Mediation and Conciliation Service (FMCS) (O.R.C. 4117.02).

6. Train representatives of employee organizations and public employers in the rules and techniques of collective bargaining procedures.

7. Make available to employee organizations, public employers, mediators, fact finding and conciliation panels, arbitrators and joint study committees statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve issues in negotiations.

65.04 PUBLIC EMPLOYEE RIGHTS (O.R.C. 4117.03)

Public employees have the right to:

1. Form, join, assist or participate in, or refrain from, union activity.

2. Engage in concerted activity for collective bargaining or mutual aid or protection.

3. Union representation.

4. Engage in collective bargaining.

5. Present grievances and have them adjusted with or without union assistance. Note- Grievances adjusted without union assistance cannot violate the collective bargaining agreement.

65.041 SOLICITATION POLICY FOR COUNTIES

In the interest of good management principles of efficiency and effectiveness in the workplace, counties should adopt a policy for solicitation and distribution in the workplace by employees and non-employees so that both parties are aware of the rules. The policy should outline:

1. When and where unions or union members may solicit members or distribute literature (i.e., breaks or lunch time in a designated room, area, or bulletin boards where notices may be posted).

2. When and where any solicitation is permitted.

3. Disciplinary procedures for non-compliance.

Consideration of a county's policy regarding the use of electronic devices, such as computers, email, social media, etc. should include the possible use by employees attempting to organize in a union.

Note: Counties may not treat union solicitation different from other types of solicitation. Without a policy, it is possible for a county to inadvertently grant rights that must be extended to a union. Essentially, a public employer cannot treat union activity any better or worse than it treats other types of employee solicitation by non-county entities.

65.05 UNION RECOGNITION PROCESS (O.R.C. 4117.05)

A union becomes the "exclusive representative" of the employees in the bargaining unit by filing the appropriate petition with SERB along with valid signatures from employees in the current or proposed bargaining unit.

1. Certification by SERB when a majority of employees by secret ballot selects the union in a SERB conducted election (O.R.C. 4117.07).

    a. A union or employee organization may file a Petition for Representation Election accompanied by evidence demonstrating that at least 30 percent of the proposed bargaining unit wishes representation by that union, or if more than one union claims representation. After a hearing, if a dispute exists, an election will be ordered. Additional unions may then file a petition.

    b. SERB will conduct an investigation to validate petitions. Initially, SERB will review the showing of interest that accompanies a Petition for Representation Election, consisting of employee signatures and compare them with the list of employees in the proposed bargaining unit submitted by the employer. Signatures are valid for up to one year and are not considered to be a public record. SERB conducts all elections by secret mail-in ballots. A union will also be certified if a "free and untrammeled" election cannot take place due to misconduct by the employer, and the union can demonstrate it had majority support at some point in the process.

    c. The Employer can object to a Petition for Representation Election. It can object to the proposed positions to be included within or excluded from the bargaining unit. If the parties can resolve any dispute about the bargaining unit, a consent election agreement will be executed and approved by SERB. If the parties cannot agree on the positions included and excluded from the proposed bargaining unit, SERB will hold a hearing to determine if a position should be included based on job duties and statutory definitions of public employees.

d. Additional unions with 10 percent showing of interest will be placed on the ballot.

e. No less than 10 days' notice of time and place must be given before an election.

f. No union will be certified unless over 50 percent of the ballots cast vote for the union. Runoff elections are held if two or more unions have filed petitions and neither union or "no representative" receives a majority of the votes cast.

g. A choice of "no representative" must be on the ballot.

h. The election bar permits only one valid election every 12 months. This means that no representation election can be held for at least 12 months after SERB certifies the results of an election. If the union prevails, they cannot be decertified or replaced for at least 12 months. If employees vote for no representative, then no union can have a representation election for at least 12 months from the date SERB certifies the election results.

2. A union may file a Request for Recognition with SERB. A Request for Recognition is an effort by a union to represent a bargaining unit of employees without a representation election. Such a request must include the following:

   a. Description of the bargaining unit; usually by designating classifications;

   b. Allege a majority of employees wish to be represented by the union supported by an adequate showing of interest.

3. Upon receiving the Request for Recognition the employer may:

   a. Request an election and/or object to the composition of the proposed bargaining unit; and

   b. Shall post notice at facility where the unit works describing the bargaining unit, union name, and date of the request for recognition, advising employees that any objections be filed no later than 21 days following the request for recognition.

   c. Notify SERB immediately of the posting of the request for recognition.

4. The union will be "certified" as the "exclusive representative of the employees" by SERB on day 22 if there is an adequate showing of interest unless it receives:

   a. A petition for election from the employer.

   b. Substantial evidence that a majority of employees do not wish representation from the union filing the request.

c. Substantial evidence from another union alleging at least 10 percent employee interest.

d. Substantial evidence of an inappropriate unit.

When a union files a request to become an exclusive representative, the request is served on the public employer. The public employer for county employees is the appointing authority, not the county commissioners. Thus, for units not involving employees of the county commissioners, there is no obligation on the part of the union or the other elected office holder to notify the commissioners, nor may the commissioners request an election should the other elected official or appointing authority decide to not make a request.

A public employer always has the option of forcing a secret ballot election to determine if employees desire to be represented by the union.

Decertification of a Union

Bargaining unit employees may decertify a union by filing a Petition for Decertification Election with SERB, alleging a majority of the bargaining unit members no longer wish to be represented by the union. The decertification petition must be supported by a showing of interest from at least fifty percent (50%) of bargaining unit employees stating they desire a decertification election. Upon an adequate showing of interest, SERB will hold a decertification election using the same procedures as it applies to a representation election. A majority of the employees who cast ballots will determine the outcome of the election. A decertification election constitutes a one year election bar to whether the employees choose to decertify or retain the union.

65.06 BARGAINING UNITS (O.R.C. 4117.06)

A bargaining unit is an appropriate group of employees organized and designated for collective bargaining. SERB will decide all bargaining units and the decision is not appealable to the courts. The following factors will be considered by SERB when determining the appropriateness of a proposed bargaining unit:

1. Desires of employees.

2. Community of interest among the employees in the proposed bargaining unit.

3. Wages, hours and working conditions.

4. Whether the proposed bargaining unit results in over-fragmentation among the employer and employees.

5. Efficiency of county operations.

6. County administrative structure.

7. Collective bargaining history.

A single bargaining unit must not include:

1. Professional and non-professional employees unless both groups, by a majority, vote for inclusion. Professional employees are those engaged in predominately intellectual work, involving consistent exercise of discretion and judgment and requiring training in a prolonged course in an institution of higher education or hospital, or completing specialized instruction and performing related work under a professional.

2. Correction officers at jails or mental institutions with other employees.

3. Deputy sheriffs with other sheriff's office employees.

4. Psychiatric attendants at county hospitals or youth leaders at juvenile facilities with other employees.

5. Employees of more than one county elected official unless the elected official and county commissioners agree (i.e. clerical support of all elected officials. Is it preferable to have one larger unit countywide or seven small units?).

6. Sheriff's office deputies (patrol and correction) who are the rank and file, with sergeants, lieutenants, captains, majors, colonels, chief deputies and the sheriff, who are supervisors. Note- The statute does not address the rank of corporal. Some collective bargaining agreements include them with deputies, some with the supervisors, and on occasion, as their own bargaining unit.

65.07 SCOPE OF BARGAINING AND EMPLOYER RIGHTS (O.R.C. 4117.08 and 4117.09)

The scope of collective bargaining is divided into the following categories or topics:

1. MANDATORY TOPICS

    a. Wages, hours, terms and other conditions of employment.

    b. Continuation, modification or deletion of an existing provision of a collective bargaining agreement.

2. PROHIBITED TOPICS

    a. Conduct and grading of civil service exams.

    b. Establishment of eligibility lists for entry positions.

    c. Original appointments from eligibility lists.

3. PERMISSIVE TOPICS – MANAGEMENT RIGHTS

Unless agreed otherwise, county employers do not have to negotiate those matters which subjects are reserved to the management and direction of the government unit except as “affect” wages, hours, terms and conditions of employment and to existing provisions of an agreement. Courts have held that the phrase “affects wages, hours, and terms and conditions of employment” is very broad. The scope of bargaining reflects this broad interpretation. This definition only requires the employer to bargain in good faith on these issues. It does not require either party to agree on a mandatory subject of bargaining.

4. MANAGEMENT RIGHTS

Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117 of the Revised Code impairs the right and responsibility of each public employer to:

a. Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;

b. Direct, supervise, evaluate, or hire employees;

c. Maintain and improve the efficiency and effectiveness of governmental operations;

d. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;

e. Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;

f. Determine the adequacy of the work force;

g. Determine the overall mission of the employer as a unit of government;

h. Effectively manage the work force;

i. Take actions to carry out the mission of the public employer as a governmental unit.

Negotiations may not be required on permissive subjects, but virtually all management decisions affect the "terms and conditions" of employment. Bargaining over the effects of a decision on employment and not the decision itself draws a narrow line between mandatory and permissive subjects. The management rights exclusion in the statute is very narrow. Note- Even though management rights are limited by Chapter 4117, they can be very important in cases involving grievances and arbitration under a collective bargaining agreement.

All collective bargaining agreements must be written and contain the following clauses:

1. A Grievance procedure, which may provide for final and binding arbitration of unresolved grievances, and disputed interpretations of the agreement. The scope of any grievance procedure is limited to the definition of grievance in the agreement. This provision is very important in negotiations.

2. A dues deduction provision to deduct dues, initiation fees, and assessments payable to the union when the employee signs a dues deduction card.

The law prohibits an agency shop or fair share fee. Employees cannot be required to join the union or pay dues. The decision on whether to pay dues does not affect an employee's bargaining unit status. Even those employees who are in a bargaining unit position but do not pay dues are subject to the provisions of the collective bargaining agreement.

65.08 COLLECTIVE BARGAINING AGREEMENT PREVAILS OVER STATE LAW (O.R.C. 4117.10(A))

Any collective bargaining agreement reached under Chapter 4117 of the Revised Code prevails or takes precedence over any and all conflicting laws, resolutions, provisions, present or future, except as otherwise specified in Chapter 4117 or by the General Assembly (O.R.C. 4117.10(A)). The exceptions to this are laws pertaining to:

1. Civil rights.

2. Affirmative action

3. Unemployment compensation

4. Workers' compensation

5. Retirement of public employees

6. Residency requirements

7. Minimum educational requirements pertaining to public education

8. Compensation and leave of absence provided for reservists called to active duty under O.R.C 5923.05

9. 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

Probationary Periods. The length of probationary periods has been determined to be negotiable, both for entry level and promotional positions. If the contract does not include provisions regarding probationary periods, civil service law applies.

Promotional examinations. Promotional examinations are also subject to bargaining, even if the position is not included in the bargaining unit. Except for sheriff's office

agreements, provisions regarding promotional examinations rarely appear in County contracts.

Appointments and examinations for positions are covered in the civil service chapter.

65.09 COUNTY COMMISSIONERS AS LEGISLATIVE AUTHORITY FOR THE COUNTY (O.R.C. 4117.10(B) and(C))

A public employer is required in Section 4117.10(B) of the Revised Code to submit a request for funds to implement a collective bargaining agreement and for approval of any other matters requiring the approval of the appropriate legislative body to the legislative body within 14 days of the date on which the parties finalize the agreement. County commissioners are defined as the appropriate legislative body for the county because the board has the authority to approve the budget for the county as a public jurisdiction (O.R.C. 4117.10(B)).

In effect, this means that any collective bargaining agreement reached by any county office, board, commission, or agency must be submitted to the county commissioners for approval, including county elected officials, children services boards, DD boards, etc. The commissioners must approve or reject the submission as a whole within 30 days after it is submitted by the public employer. The submission is deemed approved if the commissioners fail to act within 30 days. The commissioners cannot reject portions of a contract; they must accept or reject the entire contract (O.R.C. 4117.10(C)). If the commissioners reject the agreement either party may re-open all or part of the agreement.

Approval of the collective bargaining agreement by the county commissioners does not imply that the commissioners will supply the funding necessary to implement the agreement at current or projected staffing levels. The public employer is required to consider available resources in reaching the agreement and has remedies at his or her disposal to stay within his or her budget. If raises or benefits require more funding than the public employer's budget allows, the public employer has the option of layoffs or other cost saving measures to stay within the budget allotted.

Once the agreement is in writing and approved by the union and the commissioners the agreement is binding. As noted above, an agreement is also “deemed approved” if no action is taken by the commissioners within 30 days of submission to the commissioners by the county appointing authority.

65.10 NEGOTIATION PROCEDURES AND DISPUTE SETTLEMENT PROCEDURES (O.R.C. 4117.14; O.A.C. 4117-9-05, 4117-9-06)

This section illustrates a chronological timeline of what happens during the negotiation phase if an impasse occurs in collective bargaining. Negotiations begin after voluntary recognition of the union by the county, or after a representation election when a union wins, and the results have been certified by SERB. This timeline assumes the election process has been completed. Please note the timeline for negotiations under Chapter 4117 is too short in most situations. It is common for parties to extend the negotiations process.

90 Days (New contract)

If no collective bargaining agreement exists between the county commissioners and the union, either party may file with SERB a “Notice to Negotiate” and notify the other party. The Notice must include names and addresses of both parties, the name, address, and telephone number of the principal representative, and an offer to meet for 90 days. Negotiations for a new contract begin for 90 days.

61 Days (existing contract)

If a collective bargaining agreement is in effect, either the county or the union desiring to terminate, modify or negotiate another agreement must file a “Notice to Negotiate” with SERB and notify the other party. If the existing agreement does not have an expiration date, notice must be given not less than 60 days prior to the proposed expiration date. The “Notice” must have the names and addresses of both parties and include a copy of the existing collective bargaining agreement. As stated above, the parties can agree to a longer negotiation period than provided for in the statute.

50 Days

If, 50 days prior to the expiration of the negotiation period an agreement has not been reached, either party may contact SERB for aid. The request must contain names and addresses of the parties, the issues involved and the expiration date of the agreement, if applicable. Upon the request to SERB, the Board must investigate to determine if the parties have engaged in collective bargaining. As a practical matter, SERB does not investigate. Rather, it automatically assigns a mediator in case the parties need assistance. The parties are not obligated to mediate as part of the negotiation process and they may use a mediator other than the person appointed by SERB.

45 Days

If, 45 days prior to the expiration of the negotiation period, an impasse exists, SERB may appoint a mediator, or the matter may be submitted to a mutually agreed upon alternate dispute settlement procedure (mutually agreed dispute procedure or MADD) which shall supersede the dispute settlement procedures in the law.

The alternate dispute settlement procedure (MADD) is a process agreed to by the parties that deviates from the statutory dispute resolution procedure and may include:

1. Conventional arbitration of all unsettled issues.

2. Arbitration confined to a choice between the last offer of each party to the agreement:

    a. As a single package.

    b. On each issue submitted.

3. Settlement by a citizens conciliation council of three county residents. The county and union each choose a member, and the two members choose a third member, who chairs the council. If within five days of their employment the two members cannot decide on a third member, SERB will appoint the third member.

4. Any other mutually acceptable procedure with limits for safety forces.

If the county and union do not agree to, or do not want an alternate dispute settlement procedure, SERB will appoint a mediator, and the dispute settlement procedure in Section 4117.14 of the Revised Code will be followed.

At any time after a mediator has been appointed, either party may request that SERB provide the county and union with a list of fact finders. Both parties must agree on a fact finder and notify SERB, who will appoint the fact finder. If the parties do not choose from the list within seven days, SERB will appoint a fact finder. Once a fact finder is appointed, the parties work with the fact finder to schedule a hearing date. The parties can mutually agree to a fact finder who is not on the list.

A fact-finding hearing is held to address the outstanding issues in negotiations. A fact-finding is similar to an arbitration hearing. The fact finder will hear evidence from both parties concerning the issues. The fact finder is required to consider the following criteria when issuing their recommendation:

(a) Past collectively bargained agreements, if any, between the parties;

(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

After the appointment of the fact finder, but no later than 5:00 pm on the last business day prior to the hearing, each party must provide the following information to the fact finder and the other party via electronic mail:

1. Name of the county and office, and the name, address, email address and telephone number of county representative.

2. Description of the bargaining unit and approximate number of employees.

3. Copy of current collective bargaining agreement, if any.

4. Statement of all unresolved issues and the county position and rationale with regard to each unresolved issue.

Fact finding can be expensive, because the daily rate per fact finder up to$1,200, which is divided equally between the county and union.

14 Days to Hold Fact Finding

Fact finding must take place within 14 days of the fact finder's appointment unless the county and union agree to an extension. The fact finder shall provide written recommendations on all unresolved issues with a separate summary of each recommendation. The report and recommendation will be provided to the county appointing authority, the union, and SERB. The commissioners will not receive a copy if not the appointing authority. The fact finder can recommend, on an issue by issue basis, the employer's proposal, the union's proposal, or something different.

7 Days After Report and Recommendation

No later than seven days after the findings and recommendations are sent, the county commissioners, and bargaining unit members each may vote on the fact-finding report. Either party may vote to reject the fact finder's report which requires a three-fifths majority to vote in favor of rejection. Acceptance is assumed if the report and recommendation is not rejected., After the voting period, the fact-finding report and results are publicized. A party must serve evidence of the vote to reject on the other party and file with SERB within twenty-four (24) hours of the time the vote is taken The Union vote must be by secret ballot. While the county commissioners may discuss the fact finder's recommendations in executive session, the vote must be taken in public.

If a party fails to vote on the fact finder's recommendations within seven (7) days, the report is deemed accepted.

If the report is approved or deemed accepted by the parties, the fact finder's report becomes the basis of the new collective bargaining agreement.

If the recommendations are rejected by at least one party for a bargaining unit of non-safety forces or employees not prohibited from striking, the employees have the right to strike, provided the notice to strike must be given 10 days before the date of the strike. The time and date the strike is to commence must be stated. Of course, the parties have the authority to continue negotiating in an effort to reach a new collective bargaining agreement.

If a fact-finding report is rejected for safety forces and other employees prohibited from striking, the matter shall be submitted to a final offer settlement procedure by a conciliator. County employees that are prohibited from striking include deputy sheriffs, sheriff's

dispatchers, emergency medical or rescue personnel, corrections officers or guard at penal institutions, psychiatric attendants at mental health facilities, youth leaders at juvenile correction facilities, and exclusive nurses' units. The parties select an arbitrator from the five names of conciliators provided by SERB.

5 Days to Select Conciliator

If, after five days from the SERB order for conciliation the county and union cannot agree on a conciliator, SERB will appoint a conciliator. The parties can mutually agree to a conciliator who is not on the list provided by SERB.

Upon notice of the conciliator's appointment, but no later than five calendar days prior to the hearing, each party shall submit a position statement to the conciliator, the other party, and SERB via electronic mail which contains the following:

1. Name of the county and office, and the name, address, email address and telephone number of the county representative.

2. Description of the bargaining unit and approximate number of employees.

3. Copy of the current collective bargaining agreement, if any.

4. A report defining all unresolved issues, stating the final offer as to each issue, and summarizing the position with respect to each issue. This final position may be revised at any mediation effort.

30 Days

The conciliator holds a hearing within 30 days of SERB's order to the parties to conciliate. This time frame may be extended by the parties. After the hearing, the dispute will be resolved on an issue-by-issue basis from one of the final offer settlements. The arbitrator may not fashion a remedy. The arbitrator must select either the union proposal or the employer proposal on each issue. Written findings are furnished to the county, union, and SERB. The final offer settlement award is a binding mandate requiring the county and union to take whatever actions to implement the award. Awards and orders are subject to review by the common pleas court of the jurisdiction.

One-half of the cost of a conciliator is paid by each the county and the union.

65.11 STRIKES, TEMPORARY RESTRAINING ORDER AND INJUNCTIONS (O.R.C. 4117.15/4117.16/4117.23)

Strike notice must be given 10 days prior to the expiration of the negotiating period. The notice must specify the date and time the strike will commence.

Injunctive relief against illegal strikes by safety forces or their dispatchers, emergency medical personnel, nurse's units, correction officers, psychiatric attendants, and youth leaders at juvenile detention facilities can be petitioned from common pleas court as well

as strikes during the term or extension of a collective bargaining agreement (O.R.C. 4117.16).

If county employees strike, the employer may notify SERB and request a determination on the legality of the strike pursuant to O.R.C. 4117.23 within 72 hours of notice. After an investigation, if SERB determines that the strike is unauthorized, employees may be penalized. After a one day notification, employees may be removed or suspended. If they are reinstated by the same appointing authority, their salary cannot be higher than before the strike, nor can it be raised for one year after the reinstatement. Another penalty, which may be served if SERB determines that the employer did not provoke a strike, is that for each day the employee remains on strike after the notification, two days' wages may be deducted. SERB will conduct a hearing to determine the appropriateness of the penalty, and may suspend, modify or reverse the penalty. Public employees are not paid for strike time.

Under O.R.C. 4117.16, a temporary restraining order, not to exceed 72 hours, can be petitioned from common pleas court to prohibit a strike if a clear and present danger to public health or safety is present. During the 72 hours SERB will determine if a clear and present danger exists. If SERB determines that the strike presents a clear and present danger, the employer must return to court to seek an extension of the injunction for up to 60 days. After 60 days, no court has jurisdiction to issue any further injunction enjoining the strike. If a court issues an injunctive order beyond the temporary restraining order, both the county and union must negotiate 60 days or until an agreement is reached, whichever occurs first. SERB will appoint a mediator who has the authority to require bargaining in public or private. After 45 days, the mediator may make a public report and include a statement by each party of its position and offers of settlement.

The county should begin planning for a potential strike no later than the date the fact-finding report is rejected by a party. As stated above, employees who strike do not get paid. Bargaining unit employees, with proper notice, have the right to strike, but they also have the right to refrain from going on strike. Even if a union calls a strike, employees may still come to work. Employers should do as much as possible to encourage employees to continue working even if there is a strike. Of course, employees in non-bargaining unit positions do not have a choice. An employer should consider strategies on how they can encourage employees to work during a strike. For example, an employer can consider limiting paid time off so employees cannot avoid making a decision about whether to go on strike or work. The employer should consider how to safely get employees to the workplace and should consider implementing its last best offer to encourage bargaining unit employees to work even if there is a strike.

65.12 UNFAIR LABOR PRACTICES (O.R.C. 4117.11)

It is an unfair labor practice for public employers to:

1. Interfere, restrain, or coerce employees in exercising their collective bargaining rights, or in the union selecting a representative.

2. Interfere with, create, or dominate unions.

3. Discriminate against employees in regard to hiring, firing or terms and conditions of employment based on the employee's exercise of his/her rights under the collective bargaining law.

4. Refuse to bargain collectively with the union.

5. Fail to timely process grievances and requests for arbitration.

6. Lock out employees to pressure them to compromise.

7. Cause or attempt to cause a union to fail to discharge responsibilities under Chapter 4117 of the Revised Code.

It is an unfair labor practice for public employees and unions to:

1. Restrain, coerce or interfere with employees in exercising rights under Chapter 4117 of the Revised Code.

2. Refuse to bargain collectively.

3. Cause or attempt to cause an employer to fail to perform duties under Chapter 4117 of the Revised Code.

4. Call, institute, maintain, or conduct a boycott against the employer.

5. Induce or encourage an unauthorized strike, or restrain any person to force them to do action.

6. Encourage picketing of the home or business of the public employer or their representative.

7. Picket, strike, or refuse to work without giving written notice to the public employer and SERB 10 days prior to the action.

65.13 INVESTIGATION OF UNFAIR LABOR PRACTICES BY SERB (O.R.C. 4117.12)

An unfair labor practice charge can be filed by any person within 90 days after the alleged unfair labor practice was committed. The only exception to this rule is if a person is in the armed forces, the charge must be filed no later than 90 days after discharge.

The charge must be written, signed by the charging party or their representative, and contain (All forms are available online):

1. The name, affiliation (if any) and address of the charging party and the title, name, and address of any representative filing the charge.

2. The name, affiliation (if any) and address of the charged party.

3. A clear and concise statement of facts constituting the alleged unfair labor practice.

4. A brief statement of other relevant information.

When SERB receives the charge, an investigation is conducted to determine if there is probable cause to believe an unfair labor practice has occurred or is occurring. During the investigation, the “charged party” is asked to respond and may provide information. The parties may also mediate during the investigation period.

SERB will dismiss the charge and not issue a complaint if the investigation proves that there is no probable cause that an unfair labor practice has occurred or is occurring and inform both parties. If the charging party wishes to withdraw the charge, SERB must be notified in writing.

SERB may dismiss a complaint as frivolous if it finds that the complaint was issued for harassment, delay, or contains a misstatement of facts of which the complainant had knowledge. Costs will be assessed accordingly.

If SERB finds that there is probable cause that an unfair labor practice has been committed a complaint will be filed against the charged party. The complaint will include:

1. A clear and concise statement of the facts charged.

2. A clear and concise description of the acts that constitute an unfair labor practice.

3. Notice of SERB hearing.

The charged party has 10 days from the receipt of the complaint or amendment to the complaint to reply. The reply must include a specific admission, denial, or explanation concerning the allegations in the complaint. If the charged party fails to file a timely answer, the failure constitutes an admission of guilt.

The hearing must be conducted by the board, board member or hearing officer of SERB. Evidence may be submitted by either party at hearing through witnesses, documentation and exhibits. After the hearing the proposed decision and recommended order shall be sent to the parties and filed with SERB. Either party may file exceptions to the proposed decision and recommendation. If no exceptions are filed within 20 days after service of the recommendation, it becomes the order of the board. If exceptions are filed, SERB may rescind or modify the order, but if SERB determines that no substantial exceptions have been raised, it may refuse to grant review.

If SERB finds that a party has committed an unfair labor practice, it will order the party to cease and desist, and/or may order reinstatement of employees with or without back pay. SERB may also require periodic reports showing extent of compliance. Anyone may inform SERB of non-compliance. The claim must be in writing and if possible, provide evidence. If SERB finds reasonable cause for noncompliance, an investigation will be ordered.

If SERB determines that no unfair labor practice has been committed, an order dismissing the complaint will be issued. If an unfair labor practice complainant alleges that a party

will suffer substantial and irreparable injury if not granted temporary relief, SERB may petition the court of common pleas for a temporary restraining order pending the final adjudication by SERB.

65.14 OTHER CONSIDERATIONS REGARDING BARGAINING

Given the scope of collective bargaining and its potential impact on the county budget it is recommended that county commissioners:

1. Designate someone on staff to coordinate negotiations for employees under the commissioners (direct employees, CDJFS, county home, dog warden, building department, etc.) and to coordinate negotiations and approval of contracts with other elected officials, boards, and agencies.

2. Coordinate a county-wide negotiation strategy. This will keep the county from being “whip-sawed” on issues. This is a common tactic and is used to gain benefits in one contract to then use as leverage in subsequent contract negotiations. The result is that the unions will attempt to secure in their contract the economic items gained in other contracts. This is known as “internal comparables.”

3. Consult with the county prosecuting attorney and/or retain competent counsel on collective bargaining.

4. Maintain confidentiality during negotiations. Negotiations are conducted in private. Information regarding negotiations may not, during negotiations, be made public or provided to the employees.

5. Do not sit personally at the negotiating table as it gives a commissioner as a policy maker no room to consider proposals away from the pressure of immediate negotiations.

6. Authorize a representative to bargain in good faith and allow bargaining only at the table and only through that representative. Avoid “side negotiations” unless everyone agrees and the issues are limited. Making promises and pronouncements separate from the bargaining table will undermine the county's negotiator and weaken the county's bargaining position.

7. Collective bargaining can be a good, positive management tool for the county if it is approached with an open mind and a good grasp of the rights and needs of the employees, management, and the public are considered.

8. Avoid discussing strategy in public. Collective bargaining strategy is a proper subject to discuss in executive session.

9. Be aware of all public records and public meetings provisions (sunshine law) that apply to the representation and negotiation process.

10. Review with the person(s) designated to negotiate the issues and economic impact of the negotiations. The representative should have the authority to sign tentative

agreements at the negotiation table. Unions and the employees must have the confidence they are negotiating with a person who has authority to do so – this enhances the negotiator's and the Board's credibility.

11. Once a tentative agreement has been reached and the union has ratified the tentative agreement, move quickly to approve and implement the contract. Delay seldom benefits the county and generally more issues arise during a delay.

12. When issues arise during the term of the contract, work to resolve those issues so there will be fewer issues lingering to the next negotiations.

13. Consider packaging or trading issues with the union during negotiations. For example, when negotiating increases in economic issues, the county should identify non-economic issues that the county would need to strengthen management rights.

14. Identify the economic provisions of the contract that have built-in increases and work to limit those costs.

15. Maintain status quo during negotiations. While negotiations are on-going, even if a contract expires, the county must continue to implement and abide by the terms of the contract. Unless a term in a contract is specifically set to expire (e.g. date certain), the terms of the contract must be followed while the parties continue to negotiate. Items which commonly continue "status quo" are: grievance procedures, step increases, longevity payments, uniform allowance, health insurance and others.

16. Bargaining Impasse. The law provides for a set procedure for bargaining (discussed above) which includes mediation, fact finding and the right for employees to strike (non-safety) or binding arbitration-conciliation (safety employees.

    The county may not unilaterally implement its last best offer until there is an "impasse." This is a complicated step under the bargaining process and must be planned very carefully to avoid an unfair labor practice charge from the union.

17. Communications during bargaining. Because the law requires bargaining to be "private," the county (commissioners and all other appointing authorities) and the union are not permitted to communicate to the public or to employees the position of the county on any issues in the bargaining process. Likewise, the union and the employees are not permitted to communicate positions on issues with the public (media) or with the elected officials outside the bargaining process. This is known as "direct dealing" and can be the basis of an unfair labor practice charge.

18. Informational picketing is permitted under certain circumstances. It is unclear if a 10 day notice by the union or employee is required. There are First Amendment implications with informational picketing that must be considered by the county. *United Elec. Radio and Machinery v. State Empl. Rel. Bd.*, 126 Ohio App. 3d 345

(8th Dist.); *Mahoning Educ. Assoc. of Developmental Disabilities v. State Empl. Rel. Bd*, 2012-Ohio-3000 (7th Dist.)

19. Strikes. With a 10-day notice to the employer and SERB, non-safety employees may engage in a strike. Employees are not paid while on strike. Only in limited circumstances have employers been able to secure injunctions against strikes where the strike presents a clear and present danger to the public.

65.15 NEGOTIATIONS AND CONTRACTS FOR OTHER OFFICE HOLDERS

Approval of contracts is the responsibility of the legislative body. For counties, that is the Board of County Commissioners. The Commissioners have the authority to approve contracts but the individual appointing authorities have the authority to bargain most of the terms of their contracts.

Issues of county-wide impact: These include health insurance (discussed separately); leave such as vacation, holidays, sick, personal and injury; uniforms; and wage increases.

The coordination of negotiated items among the various county appointing authorities provides the county with ability to control the overall economic costs of contracts and the impact on the general fund.

A fact finder and conciliator often will consider the benefits received by other county employees when issuing their decision.

65.16 HEALTH INSURANCE

Insurance for county employees is an issue reserved for the commissioners. O.R.C. 305.171 gives the commissioners the authority to determine the health insurance plans. No other county appointing authority has that authority unless the commissioners have approved a contract for another appointing authority for a health insurance plan or terms for health insurance.

This authority for commissioners has been litigated several times, with the courts affirming that the commissioners have this exclusive authority. *Allen County Sheriff v. FOP,* 3d Dist. Case No. 1-11-55, 2012-Ohio-3122 (July 9, 2012). *Licking County Sheriff v. Teamsters*, No. 367, 2009-Ohio-4765 (5th Dist. Sept. 10, 2009).

The unions continue to press this issue. Therefore, it is important that all commissioners affirmatively state to and inform all appointing authorities in the county which have labor contracts that only the commissioners have this responsibility and authority.

This statute does not prevent unions from trying to secure specific health insurance benefits for their members. It also does not restrict an appointing authority from bargaining a different premium contribution required of bargaining unit employees subject to the budget for that office.

65.17 GRIEVANCE PROCEDURES

The law requires that all contracts contain a grievance procedure. While the law does not require that the grievance procedure end in "binding arbitration" most contracts include binding arbitration.

The key to the procedure is the definition of a "grievance." The definition should be very narrow and limited to only those items or issues "specifically contained" in the contract. For example, a common grievance definition is a violation, misinterpretation, or misapplication of a specific provision of the collective bargaining agreement.

In addition, employers should be careful to address aspects of the arbitration procedure. Some of these issues include how the arbitrator will be selected, the authority of the arbitrator and who pays the arbitrator (usually split between the parties or loser pays). The agreement should, at a minimum, state the arbitrator has no authority to add or subtract from the provisions of the agreement.

The decisions of arbitrators are "binding" with a very limited right to appeal. O.R.C. 2711.10.

Discipline matters are the most common issue grieved and arbitrated. The grievance and arbitration process replaces or preempts appeals otherwise available to employees. For county employees the grievance – arbitration process replaces their right to appeal discipline to the State Personnel Board of Review (SPBR) if the agreement so states. A grievance/arbitration procedure cannot supersede an employee's right to file a charge of discrimination with the Equal Employment Opportunity Commission or the Ohio Civil Rights Commission.

Employees and unions may also grieve and arbitrate contract interpretation matters, such as overtime pay, holidays, insurance coverage, assignments, promotions, and any other contract provision.

Because arbitrators do not know and are not generally familiar with county procedures and policies, or what a particular county office does, those arbitrators must be educated about the policies and impact on the county. Do not assume they know the policies and limitations.

Being aware of the grievances and arbitrators involving other county appointing authorities is important in order to address and avoid potentially damaging impact from adverse arbitrator decisions.

65.18 DUTY OF FAIR REPRESENTATION

Under the law unions have a "duty" to fairly represent (DFR) the employees covered by a contract. This is <u>not</u> an area where the county may become involved. Employees have

a specific procedure under the law to file an unfair labor practice charge with SERB if they believe the union has not fairly represented them.

Most of the “DFR” charges arise out of the discipline employees receive and when the union does not timely appeal or grieve the discipline or where the union does not pursue the discipline to arbitration.

When an employee files a charge alleging the union violated its “DFR” of the employee the employer generally also is involved in the matter at SERB. At this point in the process, it is important for the employer to provide the justification for the discipline. Very few of these DFR ULP’s are successful, but the county/employer must be prepared to explain, and sometimes justify the discipline or actions taken.