HANDBOOK
Ohio County Commissioners
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CHAPTER 65

COLLECTIVE BARGAINING

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65.01 INTRODUCTION

The passage of SB 133 on June 6, 1983 established collective bargaining in Ohio. SB 133 of the 115th General Assembly created ORC Chapter 4117. 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 and firefighters who have binding arbitration in lieu of the right to strike.`

65.02 KEY DEFINITIONS (ORC 4117.01)

Public employer means the State of Ohio, a political subdivision including any municipal corporation or unincorporated area of a township with a population of at least 5,000.

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 ORC Section 4117.10, which accepts or rejects a proposed collective bargaining agreement for employees of county office holders (see Section 65.09).

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 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.

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 court, 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 ORC 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% 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 a work activity, development activity, or alternate work activity under the Department of Job and Family Services Ohio Works First Program where the service to the public employer is needed but would not be performed by employees of the public authority if the work was not subsidized employment under such a program.

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, work stoppage 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 information purposes. Certain notice requirements, including a 10 day written notice by the employees or the union is required. (ORC 4117.08.) Picketing is also permitted in the event employees strike a public employer.

65.03 THE STATE EMPLOYMENT RELATIONS BOARD (SERB) (ORC 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) (ORC 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 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 (ORC 4117.06).

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

4. Conduct investigations, hearings and rule on all unfair labor practice charges filed against the employer, employee or union (ORC 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 (ORC 4117.14), and may contract with the Federal Mediation and Conciliation Service (FMCS) (ORC 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 (ORC 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. Follow a grievance procedure with or without union assistance.

65.041 SOLICITATION POLICY FOR COUNTIES

In the interest of good management principles of efficiency and effectiveness in the work place, 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 in a county's policy regarding 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.

65.05 UNION RECOGNITION PROCESS (ORC 4117.05)

A union becomes the "exclusive representative" of the employees in the bargaining unit by petitioning, with valid employee signatures.

1. Certification by SERB when a majority of employees by secret ballot select the union in a SERB conducted election (ORC 4117.07).

    a. Requests for Election or Representation must demonstrate that at least 30% of the unit wishes representation by a union, or if more than one union claims representation, then SERB must investigate and determine if a question of representation exists. If a question of representation exists, SERB then schedules a hearing. After a hearing, if a question exists, an election will be ordered. Additional unions may then file a petition.

    b. SERB will conduct an investigation to validate petitions. All elections are secret ballot at the worksite or mail-in ballots. A union also will be certified if a "free and untrammeled" election cannot take place, and the union can demonstrate majority support at some point in the process.

    c. Additional unions with 10% showing of interest will be placed on the ballot.

    d. No less than a 10 day notice of time and place must be given before an election.

e. No union will be certified unless over 50% of the ballots vote for one union. Runoff elections are held if two or more unions have filed petitions, and neither the union nor “no representative” receives a majority of the votes cast.

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

g. The election bar permits only one valid election every 12 months (election bar).

2. When filing a request for recognition with SERB and the public employer, the union must:

   a. Describe the bargaining unit, usually by designating classifications;

   b. Allege a majority of employees wish to be represented by the union;

3. Upon receiving the request with information, the employer may:

   a. Request an election; and shall

   b. 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 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% employee interest.

   d. Substantial evidence of an inappropriate unit.

When a union files a request to become an exclusive representative, the request is served with the public employer. The public employer for county employees is the appointing authority, not the board of 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.

When SERB notifies a county that a union has been certified, the county must designate an employer representative and must notify both SERB and the certified union. In the case of a county, this is the designated representative of the county commissioners and the designated representative of any other elected office holder whose employees are in the certified unit. Both officials may, of course, designate the same representative. The union also must make a similar notification to SERB and to the county.

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 will be considered:

1. Desires of employees.

2. Community of interest.

3. Wages, hours and working conditions.

4. Over fragmentation.

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 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) and corporals, who are the rank and file, with sergeants, lieutenants, captains, majors, colonels, chief deputies and the sheriff, who are supervisors.

Multi-unit bargaining means more than one county elected official (a multi-employer unit) may act together as one unit for the purposes of collective bargaining. Any action is considered a group action and must be decided together. At the time the multi-employer unit is formed, a majority of employees from each elected official is needed. After the unit is established, the majority is the employees from all elected officials.

65.07 SCOPE OF BARGAINING AND EMPLOYER RIGHTS (ORC 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.

4. MANAGEMENT RIGHTS

    Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in ORC Chapter 4117 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. (*Cincinnati v. Ohio Council 8, American Federation of State, City, and Municipal Employees, AFL-CIO,* (1991) 61 Ohio St. 3d 658).

If a given subject is alleged to affect and is determined to have a material influence upon wages, hours, or terms and other conditions of employment and involves the exercise of inherent management discretion, the factors to be balanced to determine whether it is a mandatory or permissive subject of bargaining are:

1. The extent to which the subject is logically and reasonable related to wages, hours, terms and conditions of employment;

2. The extent to which the employer’s obligations to negotiate may significantly abridge its freedom to exercise those managerial prerogatives set forth in and anticipated by ORC Section 4117.08(C) including an examination of the type of employer involved and whether inherent discretion on the subject matter it issue

is necessary to achieve the employer's essential mission and its obligations to the general public;

3. The extent to which the mediatory influence of collective bargaining and, when necessary, any impasse resolution mechanisms available to the parties are the appropriate means of resolving conflicts over the subject matter; management decisions found, on balance, to be permissive subjects, can be implemented without bargaining the decision unless a contract provision would conflict with it and any reasonably foreseeable changes in wages, hours, or terms and other conditions of employment affected by those decisions and determined to be permissive subjects of bargaining under the above test must be bargained as soon as practicable and, whenever reasonably practicable, before the announced implementation date if the employee organization makes a timely request to bargain. In re *SERB v. Youngstown City School Dist. Bd.* SERB 95-010 (6-30-95)."

All collective bargaining agreements must be written and contain both a:

1. 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, and this provision is very important in negotiations.

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

The law authorizes, but does not require, agency shop (fair share fee) as a condition of employment in collective bargaining agreements. Under an agency shop, payment of a fair share fee by employees in the bargaining unit who chose not to join the union may be required as a condition of employment, on or after a probationary period or 60 days (whichever is greater), or on the effective date of a collective bargaining agreement. A fair share fee cannot exceed union dues, and does not require union membership. The law states that the deduction of a fair share fee from the employee paycheck by the employer is automatic and does not require written authorization of the employee. This is not always the case, because the employer can refuse to agree to the automatic deduction provision during negotiations.

Unions must have an internal rebate procedure providing for rebate to non-members of any union expenditure supporting partisan politics or ideological causes not germane to collective bargaining. Employees may protest the fair share fee with SERB.

Any employee belonging to an established religious group banning union membership and dues payment may petition SERB to permit their equal payment be paid to a mutually agreed upon charity. The union and employee must decide on the charity. An employee is not required to contribute to a charity in which they have similar objections.

Agency shop is totally different from union shop. Agency shop does not require union membership. Union shop, which is forbidden in Ohio, requires employees to join and retain union membership as a condition of employment.

Please be advised to carefully research the fair share fee issue before agreeing at the bargaining table.

65.08 COLLECTIVE BARGAINING AGREEMENT PREVAIL OVER STATE LAW (ORC 4117.10(A))

Any collective bargaining agreement reached under ORC Chapter 4117 prevails or takes precedence over any and all conflicting laws, resolutions, provisions, present or future, except as otherwise specified in ORC Chapter 4117 or by the General Assembly (ORC 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 ORC Section 5923.05.

Exceptions also include subjects prohibited for collective bargaining under ORC Section 4117.08(B).

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. Counties have flexibility in setting the lengths of probationary periods and should do so by policy or rule.

Promotional examinations. Promotional examinations also are subject to bargaining, even if the position is not included in the bargaining unit. Except for sheriff's office provisions regarding promotional examinations, such rarely appear in county contracts.

Appointments and examinations for positions are covered in Chapter 63 of this *Handbook*.

65.09 BOARD OF COUNTY COMMISSIONERS AS LEGISLATIVE AUTHORITY FOR THE COUNTY (ORC 4117.10(B) and (C))

A public employer is required in ORC Section 4117.10(B) 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. The board of county commissioners is defined as the appropriate legislative body for the county and as the body which has the authority to approve the budget for the county as a public jurisdiction (ORC 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 must reject the entire contract (ORC 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 (ORC 4117.14; OAC 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.

<u>90 Days</u> (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.

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.

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 procedures (MADD) 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 ORC Section 4117.14 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, return the list to SERB, who will appoint the fact finders. 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.

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 can be up to $950, which is divided equally between the county and union.

<u>14 Days to Hold Fact Finding</u>

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 of fact, and make 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 they are not the appointing authority.

<u>7 Days After Report and Recommendation</u>

No later than seven days after the findings and recommendations are sent, the county commissioners or appointing authority, the county commissioners, and bargaining unit members each may vote and by a three-fifths majority reject the recommendations. Acceptance is assumed if the report and recommendation is not rejected. If either party votes to reject, the results are publicized. A party that rejects must serve evidence of the vote to reject on the other within seven days.

If the recommendations are rejected for non-safety forces or employees not prohibited from striking, the employees have the right to strike, provided the notice to strike was given 10 days before the date of the strike. The time and date the strike is to commence must be stated.

If a fact finding report is rejected for safety forces and 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 guards 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.

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 and to the other party 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. After the hearing, the dispute will be resolved on an issue-by-issue basis from one of the final offer settlements and may not fashion a remedy. 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 (ORC 4117.15, 4117.16, and 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, nurses' 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 (ORC 4117.16).

If county employees strike, the employer may notify SERB and request a determination on the legality of the strike pursuant to ORC Section 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 ORC Section 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.

65.12 UNFAIR LABOR PRACTICES (ORC 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 (ORC 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 and forms are available on the SERB web site at http://www.serb.state.oh.us/forms.html. The form must be signed by the charging party or their representative, and contain the following information:

1. The name, affiliation (if any) and address of the charging party as well as 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 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 also may informally mediate during the investigation period.

SERB will dismiss the charge and not issue a complaint if the investigation proves 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 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 alleged 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. 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 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 also may 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 they 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.

65.13 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. Conduct negotiations 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. Recognize that 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, of management and of the public are considered.

8. Be aware that 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. When negotiating increases in economic issues, 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. Understand appropriate 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. Be aware that informational picketing or in conjunction with a strike, is permitted with a 10 day notice by the union or employee. Notice must be provided to both the employer and SERB.

19. Understand the realm of 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.

65.14 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 individual appointing authorities have authority to bargain most of the terms of their contracts.

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

2. 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.

65.15 HEALTH INSURANCE

Insurance for county employees is an issue reserved for the commissioners. ORC Section 305.171 gives the board of county 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 board of county commissioners has this responsibility and authority.

65.16 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.

The decisions of arbitrators are "binding" with a very limited right to appeal. (ORC 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.

Employees and unions also may 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, and the same of appointing authorities such as the sheriff or engineer, 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.

65.17 DUTY OF FAIR REPRESENTATION

Under the law unions have a "duty" to fairly represent (DFR) the employees covered by a contract. This is not 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 filed 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 time 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.

65.18 RESIDENCY

Residency requirements are not permitted for public employees except for a very limited group of employees (emergency response) and then only after an initiative petition is filed and approved. (ORC 9.481)

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