

AMENDED SUBSTITUTE SENATE BILL 5

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Presenters

- Gary McBride is a partner with Spengler Nathanson. He represents political subdivisions and business clients in labor negotiations and labor relations, and served for several years as Spengler Nathanson's managing partner. Gary is a graduate of the Willamette University College of Law (J.D., 1963) and the Harvard University College of Law (LL.M., 1964).
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This presentation and outline are meant to assist in a general understanding of Am.Sub.S.B. 5 and are not intended as legal advice.

Questions regarding specific issues should be directed to appropriate counsel.

EFFECTIVE DATES

- Amendments to Chapter 4117 apply to CBAs entered into on or after effective date of SB 5
- SB 5 provisions otherwise become effective on July 1, 2011, unless qualifying referendum petition is filed by June 30, 2011
- If qualifying referendum petition timely filed, and if SB 5 approved by majority of voters on November 8, 2011, SB 5 provisions become effective when election results certified

GENERAL PROVISIONS



GENERAL PROVISIONS

Performance-Based Pay (124.15)

- Ohio Director of Administrative Services is to adopt rules to develop performance pay system
- “Unless otherwise provided, if an appointing authority is authorized by the Revised Code to fix the wage or salary of a public employee without reference to this chapter or other parameters, the appointing authority shall fix the public employee’s wage or salary based on performance in accordance with the rules the director adopts.”

GENERAL PROVISIONS

Performance-Based Pay (505.38, 505.49)

- Performance to be only basis for proceeding through salary schedule for township police, fire employees
- Can't consider number or type of citations issued for purposes of determining police performance

GENERAL PROVISIONS

Layoffs (124.322)

- Director of administrative services to adopt rules establishing method for determining layoff procedures and order of layoff, displacement and recall of state, county employees
- Rules must prohibit agency from using length of service as only factor

GENERAL PROVISIONS

Sick Leave, Vacation

(124.134, 124.38)

- Paid sick leave accrual reduced from 4.6 to 3.1 hours for each completed 80 hours of service for civil service employees
- Paid vacation accrual rate capped at 7.7 (from 9.2) hours per biweekly pay period for certain civil service employees

GENERAL PROVISIONS: Health Insurance (124.81(I))

- A public employer shall not pay more than 85% of the cost of the provision of health care benefits

GENERAL PROVISIONS:

Retirement System Contributions

- Employers not permitted to pay employee-required contributions to state retirement systems
- PERS: 145.47, STRS: 3307.27, SERS: 3309.47, Police & Fire: 742.31, State Hwy Patrol: 5505.15
- Salary reduction pick-ups for tax purposes still okay

CHANGES TO BARGAINING LAW

CHANGES TO BARGAINING LAW

Definitions (4117.01)

- Deletes current provision that the only police and fire department employees defined as “supervisors” are chief and those authorized to perform chief’s duties in chief’s absence
- Adds to “supervisor” definition faculty at state institution of higher education who participate in course, curriculum, personnel, and other academic or institutional policy decisions

CHANGES TO BARGAINING LAW

Public Employees' Rights (4117.03)

- Preserves right to bargaining collectively to determine wages, hours, terms and conditions of employment
- Deletes right to bargain collectively over continuation, modification or deletion of existing provision of bargaining agreement

CHANGES TO BARGAINING LAW

Exclusive Representative (4117.05)

- Another employee organization, employees currently represented, or public employer may file petition with SERB for decertification of union, supported by showing at least 30% of bargaining unit employees support petition
- SERB not precluded from determining appropriate unit, holding election to determine exclusive representative (or no representative) for deemed certified unit

CHANGES TO BARGAINING LAW

Bargaining Unit (4117.06)

- Existing law: police department unit not to include with rank and file members anyone with rank of sergeant or above
- SB 5 adds: fire department bargaining unit not to include with rank and file members anyone with rank of lieutenant or above

CHANGES TO BARGAINING LAW

Subjects of Bargaining (4117.08(A))

- Mandatory subjects: Matters pertaining to wages, hours, and terms and conditions of employment
- Existing provision of CBA being modified, renewed, or extended that does not concern wages, hours, and terms and conditions is not a mandatory bargaining subject and is not subject to impasse procedure without mutual agreement of employer and union.

CHANGES TO BARGAINING LAW

Prohibited Bargaining Subjects (4117.08(B))

- Health care benefits (except can negotiate about cost paid by employer/employee, subject to 85% requirement)
- Payment by employer of employee contribution to state retirement system
- Privatization of employer's services or contracting out of employer's work
- Number of employees required to be on duty or employed in any department, division or facility

CHANGES TO BARGAINING LAW

Management Rights (4117.08(C))

Except as specifically agreed by employer in written CBA provision, employer has right to:

- Hire, discharge, transfer, suspend, or discipline employees (SB 5 deletes: for just cause)
- Determine number to be employed or laid off
- Determine employee qualifications
- Determine starting and quitting time and number of hours to be worked
- Make reasonable rules and regulations

CHANGES TO BARGAINING LAW

Management Rights - continued

- Determine work assignments
- Determine basis for selection, retention, promotion
- Determine type of equipment used and sequence of work processes (except equipment issues directly related to personal safety are subject to bargaining)
- Determine making of technological alterations by revising either process or equipment or both (except personal safety equipment issues)
- Determine work standards and quality and quantity of work to be produced

CHANGES TO BARGAINING LAW

Management Rights - continued

- Select and locate buildings and other facilities
- Establish, expand, transfer, or consolidate work processes and facilities
- Transfer or subcontract work
- Consolidate, merge, or otherwise transfer any or all of its facilities, property, processes, or work with or to any other municipal corporation or entity or affect or change legal status, management, or responsibility of such property, facilities, processes, or work
- Terminate or eliminate all or any part of its work or facilities

CHANGES TO BARGAINING LAW

Subjects of Bargaining - Ability to Pay (4117.08(D))

In determining employer ability to pay when negotiating, parties not permitted to consider:

- Possible future increase in employer income made possible only by raising revenue, including passing new or renewal levy or bond issue
- Employer's ability to sell assets

CHANGES TO BARGAINING LAW

Subjects of Bargaining

Health Care Benefits (4117.08(E))

Can't agree to provision requiring employer to pay more than 85% of cost paid for health care benefits.

CHANGES TO BARGAINING LAW School Districts (4117.081)

- Numerous additional restrictions on CBAs of school districts, educational service centers, certain conversion community schools, STEM schools
- See 4117.081 (at end of this outline)

CHANGES TO BARGAINING LAW

Written Agreement –

Fair Share Fee (4117.09(C))

CBA can't contain requirement as condition of employment that employees in bargaining unit who are not members of the union pay a "fair share" fee to the union

CHANGES TO BARGAINING LAW

Written Agreement –

Reductions in force (4117.09(F))

CBA can't contain provision requiring employer to use employee's length of service as only factor to determine whether to lay off the employee

CHANGES TO BARGAINING LAW

Terms of CBA –

Supervisor compensation

(4117.10(D))

Compensation of non-bargaining unit supervisor is not to be automatically tied to compensation negotiated in a CBA for other employees

CHANGES TO BARGAINING LAW

Fiscal Watch or Emergency (4117.104)

- CBA can't prohibit employer in fiscal watch (per state auditor) from serving written notice to modify CBA to suspend salary and/or benefit increases
- CBA can't prohibit employer in fiscal emergency (per governor or state auditor) from serving written notice to terminate, modify or negotiate a CBA
- If employer sends such notice, parties may bargain and enter new CBA

CHANGES TO BARGAINING LAW

Privatization/Subcontracting (4117.105)

- CBA can't prohibit employer from contracting out or entering into contract with another public or private sector entity to privatize services
- CBA can't require employer to retain existing employees whose work is privatized or subcontracted
- CBA can't require employer to pay additional payments to employees laid off as result of privatizing/subcontracting (other than pay for accumulated time or leave normally paid in other layoff situations)

CHANGES TO BARGAINING LAW

Number of Employees (4117.106(A))

- CBA can't limit employer in determining number of employees employed or working at any time, in any facility, building, classroom, on any work shift, or on any piece of equipment or vehicle
- Exception: equipment issues directly related to public safety

CHANGES TO BARGAINING LAW

Pensions, Overtime, Practices (4117.106(B), (C), (D))

- CBA can't provide for employer to pay any portion of public employee's state pension contributions
- CBA can't provide for hourly overtime payment rate that exceeds OT rate required by FLSA
- CBA can't require employer to follow or continue any practices or benefits not specifically set forth in CBA's written provisions

CHANGES TO BARGAINING LAW Deferred Retirement Option Plan (4117.107)

There are a number of restrictions on what CBA can provide for employees participating in deferred retirement option plan (under state police and fire pension fund)

CHANGES TO BARGAINING LAW

Vacation, Holidays, Personal Days

(4117.108)

CBA can't contain provision exceeding:

- 6 weeks annual paid vacation before 20 years service
- 12 annual paid holidays
- 3 paid personal days

CHANGES TO BARGAINING LAW

Sick Leave Balance (4117.109)

- CBA can't contain provision for sell-back of paid S/L at retirement or death that provides for cash payment of more than 50% accumulation
- CBA can't contain provision for sell-back of more than 1000 hours accumulated S/L

CHANGES TO BARGAINING LAW

Unfair Labor Practices (4117.11(B))

New union ULPs:

- Engage in strike or other concerted refusal to work
- Insist that a permissive subject of bargaining be bargained to impasse

CHANGES TO BARGAINING LAW SERB Authority (4117.12(B)(4))

If SERB determines union violated prohibitions against strike, residential picketing, secondary boycott, or boycott/picket on account of jurisdictional work dispute, SERB shall order suspension of payment of dues or fees to union for greater of 30 days or 2 times duration of the illegal activity.

CHANGES TO BARGAINING LAW

Dispute Resolution – Notice to negotiate (4117.14(B))

- Employer or union wishing to terminate, modify or negotiate successor CBA must serve written notice on other party at least 105 (currently 60) days before contract expiration, and send copy to SERB
- Can refuse to collectively bargain on continuation, modification or termination of a provision of existing CBA

CHANGES TO BARGAINING LAW

Dispute Resolution – Mediation (4117.14(C))

- Mutually agreed upon dispute resolution procedure language deleted
- If impasse exists or 70 (currently 45) days before contract expiration, SERB appoints mediator
- When mediator appointed, SERB and employer must post on their websites the terms of the last CBA offered by employer and by union

CHANGES TO BARGAINING LAW

Dispute Resolution – Fact-finding (4117.14(C))

- If no agreement 45 days before contract expiration, SERB appoints fact-finder
- Upon fact-finder appointment, employer and SERB must post on websites terms of last CBA offered by employer and by union

CHANGES TO BARGAINING LAW

Dispute Resolution – Fact-finding (4117.14(C))

- 4117.14(C)(1)(e) lists factors fact-finder is to consider, including: “As the primary consideration, the interests and welfare of the public and the ability of the public employer to pay for . . . and administer the issues proposed”
- 4117.21: Fact-finding hearings may be open to public if employer or union requests

CHANGES TO BARGAINING LAW

Dispute Resolution – Fact-finder's report (4117.14(C))

- Must include explanation of how each of the factors factored into findings of fact and recommendations
- Legislative body or bargaining unit membership may reject by majority (currently 3/5) vote of total membership
- Vote to reject must be not later than 15 (currently 7) days after fact-finder's report, or 15 days after CBA expires, whichever is earlier

CHANGES TO BARGAINING LAW

Dispute Resolution – Last best offers (4117.14(D))

- If parties unable to reach agreement within 5 days after publication of fact-finder's report or 5 days after CBA expires, employer's CEO must submit copies of last best offers of employer and union to employer's legislative body
- Right to strike for non-safety forces, conciliation process for safety forces both eliminated

CHANGES TO BARGAINING LAW

Dispute Resolution – Legislative body vote (4117.14(D)(2))

- CFO determines which LBO “costs more”
- Legislative body (or committee) holds public hearing
- At hearing, parties explain their positions on fact-finding report
- Legislative body votes within 15 days after CBA expires to accept one of the LBOs

CHANGES TO BARGAINING LAW

Dispute Resolution – Legislative body vote (4117.14(D))

- Compensation increases and “other matters with cost implications” may be effective only at start of fiscal year next commencing after date of legislative body vote
- But can be retroactive to start of a new fiscal year that began since submission to legislative body for decision

CHANGES TO BARGAINING LAW

Dispute Resolution

Legislative body vote (4117.14(D))

- Parties must sign CBA representing LBO legislative body chose
- Agreement must be effective for 3 years
- If tie vote, or LBO otherwise not chosen within 15 days after CBA expires, the employer's LBO becomes the agreement, for 3 years

CHANGES TO BARGAINING LAW

Insufficient Revenues (4117.141)

- Within 3 days after legislative body chooses LBO, CFO must determine if sufficient revenues to cover
- If legislative body chooses costlier LBO and CFO determines revenues insufficient or refuses to make determination, either party or any constituent may petition to submit LBO's to voters
- Procedures for petitions, ballot summaries

CHANGES TO BARGAINING LAW

Voter Approval (4117.141(I))

- Voter approval provisions apply to each public employer that has a defined geographic area located within the state
- All CBA's of all such employers must contain provision stating the agreement may be subject to approval of the voters, as described in R.C. 4117.141.

CHANGES TO BARGAINING LAW

Strikes (4117.15)

- Public employee strikes not permitted
- Anyone who violates may be subject to removal or other discipline
- Employee absent without permission presumed to have engaged in strike
- CFO to deduct 2 times daily rate of pay for each day or part of day employee violated
- Statute provides procedures for determining who violated, objections, hearings

CHANGES TO BARGAINING LAW

Public Employer Report (4117.26)

- Within 30 days after CBA entered into, employer must submit report to SERB and post on website
- Report is to list each provision that affects compensation (broadly defined), description of changes in compensation that will occur during CBA period but not addressed in CBA, and “any material terms of the agreement”

SCHOOL PROVISIONS

SCHOOL PROVISIONS

Community Schools (3314.10)

- Employees of community schools no longer permitted to organize and bargain collectively
- Exception for community schools created by conversion of public schools if already organized, unless:
 - Majority of employees sign petition to SERB for decertification, or
 - School's governing authority submits statement to SERB requesting removal of employees from collective bargaining unit

SCHOOL PROVISIONS

Health Care Plans (3313.202)

- Board of education may pay up to 85% of cost of health care plan for employees
- Any health care plan provided by a board of education must include best practices prescribed by School Employees Health Care Board

SCHOOL PROVISIONS

Health Care Plans (3313.202)

- Health care plan benefits for management level employees must be same as provided to other employees
- Board must continue to carry on payroll for insurance purposes employees whose sick leave has expired or who are on disability or other approved leave
 - Board may pay all or part of coverage except when leave exceeds 2 years

SCHOOL PROVISIONS

Performance-Based Salary (3317.13)

- Teacher salary must be performance-based
- Measure performance by considering:
 - Level of license
 - Whether “highly qualified”
 - Value-added measure board uses to determine performance of students assigned to teacher’s classroom
 - Results of performance evaluations
 - Any other criteria established by board

SCHOOL PROVISIONS

Salary - Developmental Disabilities Board (5126.24)

- Salaries of teachers employed by county boards of developmental disabilities are also to be performance-based
- Use same standards as public school teachers

SCHOOL PROVISIONS

Teacher Contracts (3319.08)

- Initial contract \leq 3 years
- Subsequent limited contracts 2 to 5 years
- No more continuing contracts in future
- Existing continuing contracts remain
- And continuing contract available to those who met certain requirements by SB 5 effective date

SCHOOL PROVISIONS

Teacher Evaluations (3319.112)

- State Board of Education to adopt framework for teacher evaluations
- Superintendent of Public Instruction to recommend to State Board by 4/30/12
- At least 50% of evaluation to be based on measures of student academic growth
- Also quality of instructional practice, communication and professionalism, parent and student satisfaction

SCHOOL PROVISIONS

Teacher Evaluations (3319.111)

- Local boards of education must adopt evaluation policy by 7/1/13
- In consultation with teachers
- Must use state board of education's evaluation framework
- Evidence-based, multiple measures, aligned with standards
- Evaluate each teacher at least once each year, twice if nonrenewing contract

SCHOOL PROVISIONS

Sick Leave Policy (3319.141)

- Boards must adopt sick leave policy for employees not covered by CBA
- Maximum 10 days per year (current: 15)
- Policy to be posted on website

SCHOOL PROVISIONS

Reductions in Force

- Teachers (3319.17)

- Current: give preference first to teachers with continuing contracts, then to those with greater seniority
- New: give preference first to teachers with continuing contracts, then consider the relative quality of performance

SCHOOL PROVISIONS

Reductions in Force (3319.17)

Quality of teacher performance measured by:

- Level of license
- Whether “highly qualified”
- Value-added measure board uses to determine performance of students assigned to teacher’s classroom
- Results of performance evaluations
- Any other criteria established by board

SCHOOL PROVISIONS: Reductions in Force – Nonteachers (3319.172)

- Give preference first to employees with continuing contracts
- Then consider, as “the principal factor” relative quality of performance
- Quality of performance is “as measured by board”

SCHOOL PROVISIONS

Collective Bargaining (4117.081)

For school districts, educational service centers, conversion community schools with bargaining agreements, CBA can't:

- Require minimum total number of employees or any category of personnel
- Restrict employer's or superintendent's authority to assign personnel to schools buildings
- Restrict principal's authority to designate responsibilities and workloads of building personnel

SCHOOL PROVISIONS

Collective Bargaining (4117.081)

CBA can't (continued):

- Establish maximum number of students to be assigned to a classroom or teacher
- Prohibit employer from making reductions in teacher or nonteachers for any reason specified in RIF statutes
- Restrict employer's authority to determine order of layoffs

SCHOOL PROVISIONS

Collective Bargaining (4117.081)

CBA can't (continued):

- Restrict employer's authority to acquire noneducational services from public or private entity through competitive bidding
- Restrict employer's authority to acquire products, programs or services under R.C. 3313.841 – 3313.845 (sharing of supervisory, special instruction, special ed personnel, joint educational programs, services from ESC)
- Otherwise relinquish or restrict management rights under R.C. 4117.08(C)

QUESTIONS?

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