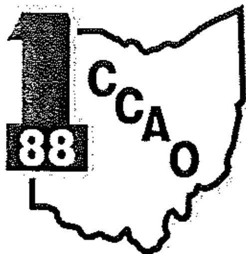

County Commissioners Association of Ohio

Serving Ohio Counties Since 1880

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February 15, 2011

MEMO

TO: ALL MEMBERS OF SENATE INSURANCE, COMMERCE AND LABOR COMMITTEE

FROM: LARRY L. LONG
EXECUTIVE DIRECTOR

SUBJECT: S. B. 5—PUBLIC EMPLOYEES COLLECTIVE BARGAINING

The County Commissioners Association of Ohio appreciates the opportunity to give testimony on S. B. 5 that would make changes to the Public Employee Collective Bargaining law that was enacted by the Legislature in 1984. The comments I will make today should be considered preliminary because our Board of Directors has not taken a position on some of the provisions included in the bill. Later this week CCAO will be reviewing the bill in detail, and subsequently we will share our position on various aspects of the bill that are not addressed in this testimony when these decisions are made by our Association.

The adopted policy of our Association has not changed significantly for a number of years. Our current policy reads as follows:

> **Ohio's collective bargaining law needs to be brought into line with the National Labor Relations Act (NLRA). The playing field should be leveled between employers and employees in this area. In addition, counties seek the ability to go to common pleas court as opposed to binding arbitration (to resolve disputes around collective bargaining).**

While this is a relatively broad policy that does not address some of the specific issues proposed in S. B. 5, it should be clear from this statement that CCAO believes Ohio's public employee collective bargaining law needs to be changed. After all, few changes have occurred in the law since its enactment over a quarter of a century ago. The emphasis in our policy is to change the law in those areas where the law varies with and goes beyond private sector collective bargaining under the National Labor Relations Act.

Back in 1983 when Chapter 4117 was written, it was largely modeled on the National Labor Relations Act, which granted collective bargaining rights for employees in the private sector back in the 1930s. Ohio law, however, varies from the federal law in several key respects, and in every case, the difference from federal law grants more extensive rights to county employees than to private sector employees. Given the various benefits that county employees already enjoy under Ohio statutory law, there is little reason for Ohio collective bargaining law to grant county employees more rights than county taxpayers, who in the end, pay the salaries of county employees.

In working with county employee and labor relations professionals as well as the Ohio Public Employer Labor Relations Association, some examples of where Ohio's collective bargaining law is at variance with the NLRA include:

- Under Ohio's collective bargaining law it takes 30% to trigger an election to certify a unit as the exclusive representative of employees in a county agency. Under the National Labor Relations Act, it likewise takes the signature of 30% of the employees in a bargaining unit to trigger a decertification election. Under Ohio law, however, decertification takes 50%.

- The scope of bargaining is much broader under state law than federal law. Any decision that <u>affects</u> wages, hours, and terms and conditions of employment potentially must be bargained with the union, even if in an area of core management rights. Employee organizations thus get the right to bargain actual decisions that may reflect core public policy, not just the <u>effects</u> of the decision, as is the case for private sector employee under federal law.

- Under federal law, economic strikers can be permanently replaced. That is not at all clear under the state law, and I understand that most experts believe it is not permitted.

You will note that our adopted policy also calls for changes in how the conciliation process works at the county level. Our policy proposes that when an impasse is reached after fact finding that the matter be submitted to the court of common pleas instead of to a SERB appointed Conciliator for a final and binding decision. Some labor relations professionals have questioned the wisdom of submitting the question directly to a court. Some lawyers have pointed out that such an approach might place courts in a decision making position that could violate the separation of powers doctrine. Yet, the position taken by our members, for the first time last year, shows the frustration they feel when an outside Conciliator makes what many of our members feel are inappropriate mandates on county government.

A good example is a case involving the Wayne County Sheriff that is now under appeal in the Ninth District Court of Appeals. In the view of Wayne County and CCAO, the Conciliator's award went far beyond what is authorized under Ohio law. It also enters areas where only elected county commissioners, as the taxing and budgeting authority for the county, should have authority.

In this case the Conciliator found that the " . . . real issue here is not the ability to pay, but the ability to finance the issues before the Conciliator." In so concluding, the Conciliator admitted that the county, while not in a "fiscal emergency," was indeed ". . . facing some real financial problems." The Conciliator also found that the evidence established that the County Commissioners had cut budgets of all departments, not just the Sheriff's budget in order to make up for continuing shortfalls and declining revenue." The Conciliator even acknowledged that ". . . the economy has placed burdens on government entities not seen in almost 30 years." However, the Conciliator then concluded that the county could still finance the Union request, but "simply chooses not to." The Conciliator claims as proof of the alleged choice by the county not to meet the wage demands of the Union the fact that the Conciliator found "no evidence that the Commissioners have even considered a tax increase. . .(or). . . had attempted and failed to raise taxes, taken out loans to cover the expenses, or the county had defaulted on some of its obligations." The Conciliator concluded by stating that "As the funding entity for the county, the Commissioners have submitted a budget to the Sheriff that gives him . . . a cut from last year. This does not prove that there is an inability to finance the issues."

While we are confident that the award granted by the Conciliator in the Wayne County case will be overturned by the Ninth District Court of Appeals, this example shows the potential for mischief that can occur under mandatory and binding conciliation as it now exists under Ohio law.

The principle is a fairly simple one. Decisions regarding funding and spending priorities should be made by county commissioners, not unelected Conciliators. This means that an arbitrator, elected by no one and perhaps not even from the county, can decide how much money a county agency should spend on wages and benefits for those covered by binding conciliation. The effect of giving some employees more may force the county commissioners to reduce the budgets of other county agencies and departments or to raise taxes. There is no basis for unelected conciliators to decide spending priorities or to force tax increases.

In closing, we appreciate the opportunity to present these comments to the Committee. CCAO will be meeting to discuss in detail some of the specific issues in S. B. 5 that are not addressed in this testimony. We look forward to working with the Committee and other interested parties to help craft legislation that will be more balanced and will respond to the fiscal realities of state and local finance today.