

## MEMORANDUM

**FROM:** Donald J. Mooney, Jr.  
**DATE:** February 22, 2011  
**RE:** Key Provisions of SB5 and Potential Impact

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**I. ELIMINATION OF SALARY SCHEDULES FOR STATE, TOWNSHIP AND SCHOOL DISTRICT EMPLOYEES, INCLUDING MINIMUM SALARY SCHEDULES FOR TEACHERS. R.C. 3306.01(A); 3317.01(C), 3317.13(A)**

**Apparent Purpose:** To make all salary decisions based on “merit.”

**Potential Impact:**

- Exposes employees and the public to arbitrary salary and wage decisions that could be based on politics, favoritism and considerations unrelated to qualifications, experience or skill;
- Takes away current incentives to obtain additional degrees and training, criteria used for advancement on current salary schedules;
- New law substitutes “merit” for salary criteria such as education or years of experience, but provides no standards for measuring “merit.”
- Eliminating even minimum starting teacher salaries from state law allows for arbitrary decisions and discrimination even within school districts;
- Result could be increased litigation alleging discrimination by state, local and school district employers challenging decisions about why some people receive higher salary or wages than others;
- Could encourage qualified teachers and professionals to migrate to states with more secure career paths, including guaranteed base salaries and advancement up a known salary schedule;
- Interferes with township trustees’ ability to establish salary schedules for patrol officers, police chiefs and other employees. R.C. 505.49(B);
- Allows the Director of Administrative Services to decide based on “merit” the pay to members of Boards and Commissions of the State, presumably opening the door for different rates of pay for different members of the same Board or Commission. R.C. 125.15;

- Current salary schedules place a known floor and cap on salaries for different classifications of state employees and school teachers. By removing minimums and maximums, and making all salary decisions based on “merit,” door is open to excessively high (or low) salaries or wages at the discretion of administrators that could be meted out based on politics, favoritism or patronage.

**II. PROHIBITS COLLECTIVE BARGAINING BY EMPLOYEES OF THE STATE, ITS AGENCIES, OR INSTITUTIONS OF HIGHER EDUCATION, SUCH AS STATE UNIVERSITIES AND COMMUNITY COLLEGES. SEE R.C. 4117.01(B)(2) AND 4117.03(G); AND 4117.08**

**Potential Impact**

- Takes away from the Boards of State Universities and Community Colleges the discretion to continue collective bargaining relationships that have been positive for those institutions for decades;
- Tosses out years of stable collective bargaining history at places like the University of Cincinnati, where collective bargaining has occurred since the 1970’s before the adoption of Chapter 4117. Collective bargaining has allowed the University to control costs of salary, reduce and reorganize staffing as required, and control benefit costs;
- Currently some state universities have collective bargaining (Examples: University of Cincinnati, Wright State University, Central State University, Kent State University) and some state universities have no collective bargaining (Examples: Ohio State University and Miami University). Nothing in the history of these bargaining relationships suggests that the existence of bargaining provides an advantage or disadvantage when it comes to controlling costs or providing a quality educational institutions.

**III. PROHIBITS NEGOTIATIONS REGARDING HEALTH CARE BENEFITS**

SB5 provides confusing and seemingly conflicting language about health care benefits. Some provisions provide that public employees must pay at least 20% of health care benefit “costs.” See R.C. 3313.202(B) and R.C. 124.81(H). Other sections refer to a limit on “health care premiums” for public employers of no more than 80%. See R.C. 124.82(F). As a result, it is unclear whether the law is intended to include or exclude items such as copayments and deductibles from the 20% cost to be borne by public employees.

**Potential Impact:**

Fails to consider the long history of bargaining between public employers and employees that has allocated resources between salaries, wages and/or benefits. Removing health care benefits from the realm of collective bargaining will have the following impact:

- Public employees and unions have frequently traded potential salary increases for enhanced benefit packages;
- An arbitrary allocation of premium percentages ignores that history, interferes with the parties' contracts, raising constitutional and fairness issues;
- The proposed change takes away from public employees their right to negotiate about what coverage is included and excluded from health benefit packages, a traditional way of controlling costs;

**IV. PROHIBITION OF RETIREMENT CONTRIBUTION “PICKUP” BY A PUBLIC EMPLOYER. SEE R.C. 3307.27, 724.31 AND OTHERS.**

**Potential Impact:**

- Fails to acknowledge the benefit of an employee shifting taxable payments to a non-taxable benefit, done in the past, which benefits both employer and employee;
- Interferes with sensible past bargaining history;
- Raises question of compliance with Internal Revenue Code, by providing that employee payments “may be treated as employer contributions.” See R.C. 3309.47. Has anyone asked the IRS if that is acceptable?

**V. ARBITRARY LIMITS ON SCOPE OF BARGAINING**

SB5 is filled with provisions limiting and restricting the scope of bargaining between a public employer and a union. Some examples:

- R.C. 4117.01(G) and other provisions eliminate the obligation of bargaining over the “continuation, modification or deletion of an existing provision of a collective bargaining agreement.” (However, R.C. 4117.14(B)(4) seems to muddle that limitation). The result will be to scrap the history of mutually beneficial bargaining;
- R.C. 4117.08(A)(2) eliminates the obligation to bargain about health care benefits, except for the amount of the premium, so long as it is not less than 20% for employees (see above);
- R.C. 4117.08(A)(3) prohibits bargaining with respect to employee contributions to the retirement system, even though in the past employers have agreed to “pick up” a portion of these costs for mutual benefit of the employer and employee (see above).
- In bargaining, the parties cannot discuss and consider potential future increases in income for the public employer, from an outside source, (i.e., federal grants, tax levy or bond issue.) R.C. 4117.08(D). In the past, employers and unions have

agreed to contingent salary increases, or other benefits, subject to the approval of anticipated tax levies, or the receipt of federal grants. Prohibiting such agreements will simply handcuff the parties and lead to unnecessary impasses.

## **VI. ADDITIONAL LIMITATIONS ON TEACHER CONTRACTS AND BARGAINING.**

Several SB5 limitations on the scope of bargaining apply just to school districts or other educational institutions. R.C. 4117.081(A). Such employers will not be allowed to agree on:

- The employment of a minimum number of personnel or categories of personnel like school psychologists or librarians;
- Limitations on the assignment or transfer of teachers;
- Limitations on workload;
- Limitations on class size;
- Limitations on the manner or order in which layoffs or staff reductions occur;
- Negotiations about health care benefits (i.e., not just the percentage of premiums paid, but the actual coverage provided); and
- *No bargaining on teachers' salaries (can only be based on "merit.") (Teachers are the only group singled out to disallow bargaining on compensation).*

These new additions to state law would effectively eradicate provisions long in current teacher union contracts that govern the terms and conditions of employment. (As an example, limitations on class size (25 students vs. 50 or more) assume that workloads are allocated fairly among teachers, and protect parents and their children from school policies that would harm children assigned to much larger classes). Such provisions can benefit the public as well as employees.

## **VII. LIMITING TEACHERS TO ONE-YEAR CONTRACTS AND ELIMINATING "CONTINUING CONTRACTS."**

In addition if SB5 takes effect:

- "Limited contract" teachers will receive no more than one year contracts. (Now can be up to 5 years). R.C. 3319.08(C).
- No new "continuing contracts" will be granted. R.C. 331908(D).

**Potential Impact:**

- Eliminates “just cause” and due process requirement to terminate a teacher who earns a continuing contract based on seven years of favorable reviews and additional education;
- Will encourage quality teachers to seek work in states with more job security.

**VIII. TERMINATING CONTRACT IN A FISCAL EMERGENCY – R.C. 4117.104.**

The new law provides that when an employer is in a “fiscal emergency” as declared by the State Auditor, it can serve a written notice to terminate, modify or negotiate a new collective bargaining agreement. But state law already allows “reductions in force” by school districts and other public employers, consistent with collective bargaining agreements. In addition, public sector unions have shown a willingness to make sacrifices and forego raises and benefits when an employer faces unexpected fiscal difficulty.

**IX. ADDITIONAL STATE AND LOCAL LAWS WHICH WILL PREVAIL OVER COLLECTIVE BARGAINING AGREEMENTS. R.C. 4117.10(A).**

SB5 expands the number of state and local law provisions that prevail over collective bargaining agreements. Presumably, this is intended to impact existing agreements, as well as new agreements adopted after the effective date. The additions to the new list of statutes and ordinances which “prevail” include:

- The provision of health care benefits to public employees;
- Residency requirements.
- Provisions pertaining leaves of absence and compensation provided under Section 5923.05 of the Revised Code.

**X. CHANGES TO FACT-FINDING AND DISPUTE RESOLUTION PROCEDURES.**

R.C. 4117.14 provides detailed and much utilized dispute resolution procedures that have greatly reduced the number of strikes in Ohio since Chapter 4117 was adopted in 1984. Key changes proposed include:

- Requiring a fact-finder to “include with its findings of fact and recommendations a written report explaining how each of the factors listed in Division (G)(7) of this section factored into the panel’s finding of fact and recommendations.” This provision simply adds to the cost and burden of fact-finding. Fact-finding reports typically provide a brief summary of the fact finder’s reasoning. Is the new language inserted to allow a litigation challenge of a fact-finder’s report if not detailed enough?

- SB5 provides that after a fact-finding panel issues its report “the public employer may implement, in whole or in part, any recommendation of the fact-finding panel approved by the legislative body.” 4117.14(B)(6)(a). This would thwart the purpose of fact-finding, which is to encourage both parties to embrace a compromise solution proposed by a fact-finder. If the public employer can reject a fact-finder’s report, and simply “cherry pick” those aspects of the report which it finds helpful, fact finding will rarely lead to a contract which both sides can grudgingly accept. The result will be more impasses and more strikes.

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