

A SHORT SUMMARY OF SENATE BILL 5

1. **Timing** – SB 5 was signed by the Governor on April 1, 2011. Under Article 2 of the Ohio Constitution, it does not go into effect for 90 days, or until July 1, 2011. If a referendum drive is successful (by obtaining 231,197 signatures) prior to that time, it is put on hold until the election on November 8, 2011.
2. **Effect on current collective bargaining agreements** - Both sides agree that SB 5 does not affect current contracts. There is a debate about contracts with wage and health care reopeners. This issue will likely be subject to litigation.
3. **Definition of Employee (i.e. Who loses everything?)**
 - a. University professors lose all collective bargaining rights (i.e. the *Yeshiva* rule applies).
 - b. Employees in the unclassified civil service lose all collective bargaining rights.
 - c. Police and Fire - Under RC 4117, supervisors in a police and fire department are not excluded from the bargaining unit, except the chief and the person who, in the absence of the chief, is authorized to exercise the authority and perform the duties of the chief. Under SB 5 – this has been eliminated and now ranking officers in a police and fire department fall within the regular definition of supervisor. The new law also states that in a fire department, fire fighters in the rank of lieutenant and above must be in a separate bargaining unit from rank-and-file employees, which implies that at least some ranking officers retain collective bargaining rights. However, the definition of supervisor, arguably, excludes all ranking police and fire. This issue will likely be subject to litigation.
4. **Changes to Certification and Decertification**
 - a. Deemed certified bargaining units can now be challenged.
 - b. Employers get elections automatically if requested.
 - c. SERB's bargaining unit determination must be the "most appropriate" bargaining unit rather than "an appropriate" bargaining unit.

- d. Bargaining units in police and fire departments that have rank and file employees with ranking officers are no longer valid and will have to be recertified by SERB, even if they are deemed certified.
- e. The 120/90 day window period for a decertification petition or a rival union's petition has been changed to no sooner than 120 days.
- f. The contract bar rule for elections has been eliminated. It is unclear what this means. This will likely be subject to litigation.
- g. Decertification petitions only require a 30% showing.
- h. Decertification petitions can be solicited and filed by employers.

5. Changes to Subjects of Bargaining

- a. The new law eliminates the language that makes the continuation, modification, or deletion of existing contract provisions a mandatory subject of bargaining.
- b. "Affects" bargaining is eliminated. This issue will likely be subject to extensive litigation.
- c. Pay based solely on seniority and education is unlawful. Salary for all public employees must be based on performance.
- d. Pay for teachers must be based on: the level of license the teacher holds; whether the teacher is "highly qualified"; value-added measure the school board uses to determine the performance of the students assigned to the teacher's classroom; the results of the teacher's evaluation; and any other criteria established by the school board.
- e. Layoffs for any public employees by seniority are now unlawful. For teachers, layoffs must be determined by the same factors listed above for teacher compensation. It is unclear what happens in a city when layoffs are governed by civil service rules. This issue will likely be subject to litigation.
- f. The definition of a "grievance" is limited to the specific language in the labor contract, thus eliminating past practice grievances.
- g. Health care – an employer may not pay more than 85% of the premium, but may pay less. Bargaining over plan design is now unlawful. It is unclear if this applies to labor/management health care committees and whether 125 plans are also a prohibited subject of bargaining. It is unclear how this would affect high deductible plans. This will likely be subject to litigation.
- h. Pension pick-up (where the employer pays a percentage of the employee's contributions) is unlawful. It is unclear whether this applies to non-bargaining employees, including employees in communities with fewer than 5,000 residents and management-level employees.
- i. Privatization is a prohibited subject of bargaining. This includes prohibitions on privatization as well as restrictions on privatization.
- j. Minimum staffing language is a prohibited subject of bargaining.

- k. Overtime paid in excess of FLSA standards is unlawful.
- l. Bargaining over class size, for teachers, is unlawful.
- m. Fair share fees are unlawful.
- n. Contributions for PACs are unlawful. This will likely be subject to litigation.
- o. Vacation leave, holidays and personal days are capped, as is sick-leave payout for retirement. It is unclear what happens when these provisions are mandated by city ordinances rather than in a CBA.
- p. Under management rights, the “just cause” language has been deleted from the discipline language. This will likely be subject to litigation.
- q. Other parts of the management rights language have been strengthened. For example, the new law adds language about determining the qualifications of employees, the right to promulgate reasonable work rules, work assignments, work standards, quantity of work to be performed and the right to consolidate, merge or transfer (i.e. regionalization changes).

6. Changes to Impasse Procedure

- a. Striking is outlawed.
- b. Conciliation for police and fire is eliminated.
- c. Direct dealing by the employer is now permitted, so long as it does not contain a threat of reprisal or force or promise of a benefit.
- d. Alternate Dispute Resolution Procedures (“MADDs”) are outlawed.
- e. Negotiations begin 105 days before expiration (rather than 60 days).
- f. When parties use mediation, the employer must post on its web site the position of both sides on all open issues.
- g. Fact-finding is conducted in public if requested by either side.
- h. The primary consideration for a fact-finder is the welfare of the public and the employer’s ability to pay.
- i. The fact-finder must consider the wages paid to other employees, not in the bargaining unit, and other bargaining units (i.e. pattern bargaining)
- j. A fact-finder’s recommended award can be rejected by a majority vote, rather than requiring a 60% rejection.
- k. If the fact-finder’s report is rejected by either side, the employer presents the last best offer of both sides to the legislative body (i.e. the city council, township trustees, county commissioners, school board) to decide between the employer’s last best offer and the union’s last best offer (not issue by issue).
- l. The legislative body then conducts a hearing in public on all open issues.
- m. If the contract is decided upon by the legislative body, then the contract must be for a 3 year period.
- n. If the legislative body fails to rule, then the employer’s last best offer is implemented.

- o. Three days after the legislative body rules, or the employer's last best offer is unilaterally imposed, the chief fiscal officer must determine if there are sufficient funds to cover the costs for the new CBA. If not, then the CBA is subject to a referendum. The referendum requires signatures from 5% of the number of electors who voted in the most recent governor's election or 100 electors in the geographic area, whichever is greater. The referendum petition must include a summary prepared by each side, of not more than 300 words, and must be submitted to the board of elections for approval. The voters will then decide between the employer's last best offer and the union's last best offer – and whatever they choose will be the final CBA. That contract must be for 3 years.
- 7. Other changes:**
- a. Fiscal Watch and Fiscal Emergency – The new law includes provisions to allow the employer to reopen the contract and unilaterally impose changes.
 - b. For ULP discipline cases, the “in part” test has been changed to a “but for” test.
 - c. Supervisors' raises may not be tied to negotiated raises.
 - d. After a contract is finalized, the employer must post on its web site any changes to the CBA and include the wages and benefits paid to all employees covered by the CBA.
 - e. Tenure for teachers is eliminated.