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# Frequently Asked Questions: Ohio SB5

*as passed by the Ohio General Assembly*

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**A SPECIAL REPORT BY:**



**AMERICAN POLICY ROUNDTABLE**

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# What is this controversy all about and why should anyone care?

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Everyone likely knows someone who “works for the government” and like every profession, government workers get their fair share of good-humored criticism in public discourse. This discussion, however, is not an attempt to joke about or demean anyone in public service. People who work for the government are people just like all other people, made in the image of God, and fully deserving the rights endowed by the Creator and secured by law in a Constitutional Republic. Every day of the year, people in public service labor to improve the quality of life for all Americans.

The challenge comes in the nature of how government workers get paid. Taxpayers are the only source of funding for these public sector jobs. Thus public service is a very high form of public trust and very different from holding a job in the private market sector. For example, “government jobs” are largely protected from “down economies.” People have to pay their taxes and pay them first. So the revenues for public payrolls are far more protected than private sector payrolls. Second, many “government jobs” are protected under Civil Service laws, which makes it very difficult to reduce the number of public sector jobs. So the old adage that “A government job is a good job” has merit for many reasons.

Since the time of President Franklin Delano Roosevelt people have been debating about how to balance the right to associate in a union in the public sector while protecting the rights of taxpayers. The emergence of SB5 in Ohio, and other such proposals around the country, has focused attention on a number of controversies attending public service. How do public employees effectively participate in unions, if they so choose? How can laws be written to assure taxpayers are not subject to “taxation without representation” in government union negotiations? How do states now facing bankruptcy and default deal with rising costs in union contracts?



This debate gets very specific in the area of collective bargaining for government employee unions. Collective bargaining is a tool unions use to negotiate with management/owners in the private sector. In the private market both sides (labor and management) are sitting squarely at the table and contracts are agreed to and implemented. When it comes to government unions, however, this model gets complicated. It is easy to see who sits at the table for the union workers but who exactly has the legal authority to negotiate solely for the interest of the taxpayers?

Many people think that state lawmakers or city councils vote on all government union contracts. That is hardly the case. Government union contracts are brokered at the state and local level through a maze of complicated authorities and procedures which taxpayers mostly never see. In addition, unions can gain access to both sides of the negotiating table by electing people to public office who then get involved in union negotiations directly or via political appointments. When economic times were good, most folks were not paying much attention to all of this. When times got really tough, especially in states with big budgets, this process rose to the surface. This is especially true in states that are required by law to balance their budgets and running a deficit is illegal. Thus the story of the controversy over collective bargaining in Ohio, Wisconsin, Florida, Tennessee and across America begins.

The following are specific questions and answers to Ohio SB5, which is a law constructed of over 300 pages dealing with public sector employees and the questions of collective bargaining. An attempt to repeal the law will most likely appear on the November 2011 Ohio ballot.

## **1. How does Ohio law define “public employees”?**

Public employees, in general, are persons (not elected to an office) holding positions by appointment or employment in the service of a public employer (i.e. state, county, municipal, township, school district, etc.) *RC 124.01(A), RC 145.01, RC 4117.01(C)*

Examples of public employees include, but are not limited to: teachers, school administrators, firefighters, law enforcement officers, police dispatchers, correctional officers, state university professors, psychologists at state or county institutions, nurses at university medical centers or city/county health departments, city bus drivers, custodians on state/county/city payroll, public librarians, highway maintenance workers, city road crews, employees of state parks, county children’s services employees, city building department employees, city meter utility meter readers, city sanitation workers, employees of any council/committee/board/bureau created by a legislative action, employees of state agencies (Depts. of Taxation, Education, Jobs and Family Services, Bureau of Workers Comp, State licensing boards, Public Utilities Commission, Bureau of Motor Vehicles, etc.)

## **2. Are all public employees members of unions?**

No. Public employees may choose to form, join, and participate in a union OR to refrain from joining or participating in a union. SB5 does not change the rights of these employees to join or participate in a union.

Ohio has 697,700 employees of state and local governments.  
<http://OhioLMI.com/asp/CES/CES.htm>

Of these, 358,276 work under union contracts.  
<http://www.serb.state.oh.us/pdf/Annual%20Report%202010.pdf>

Collective bargaining laws for government employees do not affect all government employees. *RC 4117.01(C), 4117.03(A)*



## **3. Will SB5 “bust up” the unions?**

No. State law will still protect the rights of union workers to collectively bargain for wages, hours, terms, and conditions of employment. The State Employment Relations Board will still be responsible for approving “appropriate” collective bargaining units (unions).

SB 5 does make additions to the list of what is inappropriate for negotiations.

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#### **4. Why are some firefighters and police officers restricted or limited in their union membership?**

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Because supervisors in safety forces (like fire and police chiefs) are in management positions. Current law (before SB5) exempts management level employees and supervisors from being eligible to be in a union because in labor contract negotiations they would be bargaining both sides of the contract. Current law also prohibits police officers with a rank of sergeant or above from joining the same union as rank and file officers because officers in these ranks are usually supervisory. SB5 amends the definition of “supervisors” to include fire supervisory positions for similar reasons. *RC 4117.01(C), 4117.06(D)(6)*



State law (before SB5) prohibits rank and file police officers from being in the same union as officers who are of the rank of sergeant or above. SB5 adds a requirement that firefighters who are of the rank of lieutenant or above may not belong to the bargaining unit that includes rank and file firefighters. *RC 4117.01(G), RC 4117.06(C)*

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#### **5. Does SB5 allow unions to be decertified?**

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The State Employment Relations Board (SERB) has been responsible for approving (certifying) local unions for government workers. SB5 allows for a process that would decertify (remove the certification) a local union IF a different local union or the public employer can demonstrate that at least 30% of the employees in the unit support the change. This guarantees the rights of public workers to change their relationship with management. *RC 4117.05*

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#### **6. Can nonunion public employees get the same benefits as those who belong to a union?**

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In many cases, the answer is yes. This has always been possible in state law. The Director of Administrative Services may extend payments or benefits provided to employees under a collective bargaining agreement to nonunion state employees in positions with similar duties. SB5 does not change this. Benefits in this section include leave benefits, disability, holiday pay, pay supplements, but not wages or salaries.

In addition, current law also permits public employers to elect to engage in collective negotiations with public employees who are not a part of a union. *RC 124.15(D), RC 4117.03(C)*

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#### **7. I heard that law enforcement unions could no longer bargain for things like bulletproof vests. Is this true?**

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No, this is not true. Any equipment issues directly related to personal safety (in any union

occupation, including safety officers) are subject to collective bargaining. *RC 4117.08(F)*

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## **8. I heard that families of fallen police officers and firefighters would no longer be able to collect the death benefits the same way they have in the past. Is this true?**

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No, this is not true. SB5 specifically protects the management of the death benefit amount for fallen officers and firefighters by defining it as “the amount equal to the full monthly salary in effect immediately prior to the effective date of this amendment that was received by a deceased member prior to death...plus any increases in salary permitted by law in effect immediately prior to the effective date...” *RC 742.63*

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## **9. Will nonunion employees still have to pay fair share fees to the unions?**

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Prior to SB5, Ohio public employees who prefer to not join a union have been required to pay fees to the union that are often close to or the same as what is paid for union dues. These fees have been referred to as “fair share.” The unions believe this covers the cost of bargaining and implementing the union contract. Nonunion members believe this is another way of collecting union dues under a different name. SB 5 repeals the requirement for nonunion employees to pay such “fair share” fees. *RC 4117.09(C)*

Here is an example of an explanation of fair share and the fact that it is no different in the amount of money paid for union dues. <http://www.ocsea.org/Membership/why.asp#2>

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## **10. If public employees can't negotiate for their health care benefits, won't the health coverage be much worse?**

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No, this is not true. SB 5 requires that health care benefits provided to a management level public employee be the same as any health care benefits provided to other employees. It also requires that benefits must include hospitalization, surgical, major medical, dental, vision, medical care, disability, hearing aids, and prescription drugs. *RC 124.81(H); RC 124.81(J)*

And, what about health care benefits for teachers?

Teachers have in current law the oversight of the School Employees Health Care Board (12 members) and the Public School Health Care Advisory Committee (18 members, including union leadership). The Health Care Board is mandated to set standards to which public school districts must adhere in the selection and implementation of health care plans. SB 5 does not change this protection. SB5 also requires that health care plans adopted for the schools' management level employees be the same as what is offered to other school employees, including the board of education (whose members approve the plans). *RC 124.81, RC 124.81(G), RC 3313.202(B)(3), RC 9.90, RC 9.901*

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## **11. Is it true that public employers will no longer have to pay into the employee's pension system?**

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No. State laws that govern how much the employer is required to contribute isn't even in SB5. The employer (Ohio taxpayers) will still pay a substantial percent of the employees salary into their pension fund, as follows: teachers (14%), state highway patrol employees (26 ½ %), township police officers (19.5 %), city police officers (3/10 mill of property taxes), township firefighters (24%), city firefighters (3/10 mill of property taxes)

SB 5 only repeals the practice of "pension pickups". This is when the labor agreement requires that the employer pay both the employer share and the employee share. SB 5 requires that the employees pay their own portion, nothing more. *RC 145.47, RC 742.31, RC 742.33, RC 742.34, RC 3307.27, RC 3309.47, RC 5503.13, RC 5503.15, RC 5505.15*

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## **12. If salary schedules and pay ranges with automatic steps in state law are repealed, what does that mean for the employee? I heard some teachers will be cut to \$20,000 per year.**

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No, the law does not work that way. For public union members, wages will be still be negotiated as a part of the collective bargaining. For nonunion employees the same authorities will set their wage and/or compensation schedule as do now for the most part. The biggest difference is that progression through the pay schedule will be based on "performance" (union or nonunion). *RC 124.14 and numerous other sections of the Revised Code*

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## **13. Will salaries be based on a "merit system"?**

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No. "Merit system principles" have been a part of state law (and federal law) for some public employees (i.e. county personnel departments, public child welfare agencies), but SB5 repeals the provisions for merit system principles and replaces this concept with "performance system principles." *RC 124.14(G)(6)(a)*

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## **14. What does it mean to base salaries or wages on performance?**

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There is nothing in SB5 that requires salaries to be lowered.

"Performance based" is different than basing a raise in salary solely on time served. The concept of performance could consider years of experience as a part of the picture, but could also include other quality of work measures. The performance pay rules will be adopted by the Director of the Department of Administrative Services for specified state employees, commissions, boards, committees, etc. and by other local authorities for local public employees. These will be transparent, public processes and might take more than a year to put in place. *RC 124.14, RC 124.15, and numerous other sections of the Revised Code*

There is one extra requirement for law enforcement employees. Performance can't be judged on

the number and type of citations issued by the officer. In other words, they can't get an increase in salary based on the number / type of tickets they issue to citizens. *RC 505.49, RC 124.14*

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## **15. Is performance pay for teachers the same as performance pay for other employees?**

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No. SB 5 sets up several frameworks to guide the performance-based salary schedules for teachers. Teachers will be paid a salary based on consideration of all of the following: level of license; if he/she is "highly qualified" as defined in 3319.074 of the Revised Code (which addresses credentials and professional development); value added measure of student performance; and teacher evaluations using a model adopted by the State Board of Education OR a peer review program created in agreement with the teacher's union; and other criteria established by the local school board. Most of these performance components provide an advantage for more experienced teachers. *RC 3317.13, RC 3319.074, RC 3319.111, 3319.112*

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## **16. Will tenured teachers (continuing contracts) lose their tenure?**

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No currently tenured teacher will lose his/her status as a result of SB5. Teacher tenure is repealed but only going forward in time. This will not apply to teachers who already are tenured. *RC 3319.08*

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## **17. Will repealing the salary schedules put teachers with higher salaries at risk for losing their jobs?**

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Not any more than they would be now. Teachers work under contract. The performance-based system does not include ANY component to evaluate the teacher on his/her current salary level nor does it include a mechanism to reduce salaries. Teacher salaries will continue to be negotiated by the local union as they have been doing. The components of the performance based system for teachers actually put the more experienced and more highly trained teachers at an advantage. *RC 3317.13, RC 3319.074*



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## **18. Will years of service count anymore when public employers have to decide which employees will be laid off?**

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For employees of state and county agencies, current law requires that rules for the order of layoffs "must be based in part on length of service." This provision is not changed. But, SB 5 prohibits the rules from using length of service as the only factor. Collective bargaining agreements will not be able to use length of service as the only factor to determine layoffs. Length of service can be considered. It just can't be the only factor. *RC 124.322, RC 306.04, RC 4117.09*

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## **19. What will happen to the accumulation of sick days?**

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For state public employees, the policies on accumulation and use of sick leave credits are unchanged.

Employees of county, city, township, county boards of developmental disabilities, and state colleges/universities shall be entitled to paid sick leave accrued for each completed 80 hours of service. The accrued sick leave is reduced from 4.6 hours per 80 hours of service to 3.1 hours per 80 hours of service. Based on an 8-hour workday and a 5-day workweek, this reduces paid sick leave per year from 3 weeks to 2 weeks. And it may be accumulated over multiple years.

For public school employees the local school boards will adopt policies that provide leave with pay. No one will lose accumulated sick leave credits. *RC 124.38, RC 124.382, RC 3319.141*

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## **20. Can a public employee cash out unused sick leave at the time he/she retires?**

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Yes but SB5 places new limits on such payouts. Some cities are paying out millions of dollars for an extraordinary number of accumulated sick days that union contracts require to be paid upon retirement.

Here is an example, “City to pay out \$93M to retirees”:  
<http://news.cincinnati.com/article/20110213/NEWS0108/102130403/City-pay-out-93M-retirees>

SB 5 places a limit on these types of payouts. Union contracts for government workers will be limited to sick leave payouts of no more than 50% of accumulated leave, up to a maximum of 1000 hours. *RC 4117.109*



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## **21. Will public employees get overtime pay?**

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Yes. Collective bargained agreements will provide for an hourly overtime payment rate that cannot exceed the overtime rate required in federal law (Fair Labor Standards Act) *RC 4117.106*

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## **22. Will public employees be allowed to strike?**

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Current law already stipulates that public safety officers are not permitted to strike. SB 5 will prohibit all public employees from participating in a labor strike. *RC 4117.01(H), RC 4117.15*

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## **23. What does the collective bargaining process look like under SB5?**

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These are the steps SB 5 implements to construct a negotiating process that balances union and taxpayer concerns.

- When contract negotiations begin, the first phase may last for up to 120 days. If management and labor are at an impasse, they may request a mediator from the State Employees Relations Board. If the impasse exists 70 days before a current agreement expires, then SERB appoints a mediator.
- The recommendations of the mediator must consider the ability of the employer to pay for and administer the issues in the agreement.
- If agreement is not reached or the current agreement expires, the legislative body (by majority vote of total membership) and the labor organization (by majority vote of total membership) may vote to reject the recommendation of the mediator.
- If there is still an impasse, the CEO of the public employer submits to the legislative body a copy of the findings / recommendations together with the management's last best offer and the union's last best offer.
- The legislative body (such as a City Council) will hold an open public hearing in which both parties will be required to explain their positions. The legislative body will vote to select one or the other. The chosen agreement will be executed and effective for a term of 3 years.
- If there is a tie vote or the legislative body does not make a decision within 15 days of the expiration of the agreement, then the public employer's last best offer becomes the agreement between the parties and shall be effective for a term of 3 years.

For public employers that have a defined geographic area (like a police or fire or service department) within the state :

- Within 3 days after the legislative body selects the last best offer or the public employer's offer becomes the agreement due to inaction by the legislative body, the CFO of the legislative body shall determine whether sufficient funds exist to cover the costs of the agreement.
- If the CFO determines that the legislative body selected the offer which costs more, and if the CFO determines that insufficient funds exist, OR if the CFO refuses to make a determination, then either party may submit the last best offer of each party to the electors for a public vote after the appropriate number of petition signatures are gathered. *RC 4117.14*

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## **24. What happens if union contract negotiations reach an impasse? Is there still binding arbitration?**

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Prior to the passage of SB5, binding arbitration was the third step of the collective bargaining process and it was done mostly behind closed doors. SB5 replaced this last step with an open public meeting before a locally elected body. And when all else fails, the ultimate step is to put the contract up for a public vote. *RC 4117.14*

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## **25. How will public employees know how future (new) labor agreements will affect them?**

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With each new or subsequent agreement, the public employer must issue a report (publicly posted) to the employees detailing how each provision of the agreement affects the compensation of the employees. Compensation is defined as wages, salaries, and other earnings, which includes food/drink/clothing allowances; wages in addition to base salary for work outside the normal work period; payment for length of service; dry cleaning allowances; allowances for insurance coverage. *RC 4117.26*

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