

BASA

Intensive Labor Negotiations Academy



BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS

January 21, 2022

BASA Conference Room
8050 North High Street
Columbus, OH 43235

Presented by:

Buckeye Association of School Administrators

and

Bricker & Eckler LLP





BASA and Bricker & Eckler Present:



Intensive Labor Negotiations Academy

January 21, 2022 | 9:00 a.m. – 2:00 p.m.

AGENDA

- 9:00 a.m. - 10:00 a.m.** **A Day in the Life: Labor Negotiations Version**
The Bricker Bargaining Team
- 10:00 a.m. - 10:45 a.m.** **Preparing for Negotiations**
Beverly Meyer, Diana Brown and Susan Oppenheimer, Bricker & Eckler
- 10:45 a.m. - 11:00 a.m.** **BREAK**
- 11:00 a.m. - 12:00 p.m.** **Bargaining Methods and Strategies**
George Albu, Mediator and Dane Gaschen, Bricker & Eckler
- 12:00 a.m. - 12:30 p.m.** **LUNCH (provided for in-person attendees)**
- 12:30 p.m. - 1:15 p.m.** **Dealing with labor shortages and other emerging issues**
Dave Lampe and Jason Stuckey, Bricker & Eckler
- 1:15 p.m. - 2:00 p.m.** **When Tensions Rise: Managing ULPs, Strike Threats and Strikes**
Nicole Donovan and Kate Davis, Bricker & Eckler



BASA and Bricker & Eckler Present:

Intensive Labor Negotiations Academy


January 21, 2022 | 9:00 a.m. - 2:00 p.m.





Download written materials:
www.bricker.com/BASA










Our Cast




			
Narrator	Board Counsel	Superintendent	Board Member
• Nicole Donovan, Columbus	• Dane Gaschen, Columbus	• Beverly Meyer, Dayton	• Susan Oppenheimer, Columbus

Our Cast



			
Union President	Union Vice Pres	Union Member	Treasurer
• Jason Stuckey, <i>Cincinnati</i>	• Kate Davis, <i>Lebanon</i>	Brad Bennett, <i>Columbus</i>	• Diana Brown, <i>Columbus</i>


4



Special Cameo Appearance ...

Mediator,
George Albu

Scenes



- **SCENE I: THE PLANNING MEETING WITH THE SUPERINTENDENT**
- ***
- **SCENE II: INITIAL BARGAINING SESSION WITH THE UNION**
- ***
- **SCENE III: MEDIATION BETWEEN DISTRICT AND UNION**

4




Scene I: The Planning Meeting With The Superintendent - Preparation



•The Superintendent hasn't talked to Board Counsel

5

Scene I: The Planning Meeting With The Superintendent - Preparation



•The Superintendent hasn't thought about negotiations

6

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



**•The Superintendent hasn't
consulted the Board**

10

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



**•The Superintendent hasn't
talked to the Treasurer**

11

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



**•The Superintendent hasn't
considered comparables**

12

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



**•The Superintendent hasn't
considered prior union
proposals**

13

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



**•The Superintendent hasn't
reviewed the CBA for changes
that need to be made**

14

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



**•The Superintendent hasn't
considered the problems that
arose during the past year**

15

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



- What does the district
do right?

16

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



- Discussion with the Board

17

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



- Identified district needs

18

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



- **Considered financial conditions**

19

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



- **Looked at**
- **comparable districts**

20

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



- **Reviewed the CBA for needed changes**

21

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



- Considered issues during
- the past year

22

**Scene I: The Planning Meeting With
The Superintendent - Preparation**



- Spoke with administrative
team about issues

23

**Scene I: The Planning Meeting With
The Superintendent - Team**



- “Great things in business are
never done by one person,
they’re done by a team of
people”

• Steve Jobs

24

**Scene I: The Planning Meeting With
The Superintendent - TEAM**



**•Wants to include a
contentious team member**

25

**Scene I: The Planning Meeting With
The Superintendent - TEAM**



**•Board member who is married
to the union VP (and is
covered by insurance) wants
to be on the team**

26

**Scene I: The Planning Meeting With
The Superintendent - TEAM**



**•Wants to include an
administrator who is
particularly close to the union
and very pro-union**

27

**Scene I: The Planning Meeting With
The Superintendent - TEAM**



**•Does not want to include the
Treasurer**

28

**Scene I: The Planning Meeting With
The Superintendent - TEAM**



**•Include individuals who have
substantive information**

29

**Scene I: The Planning Meeting With
The Superintendent - TEAM**



**•Include individuals who have
bargaining history**

30

Scene I: The Planning Meeting With The Superintendent - TEAM



- Include someone with a great handle on district finances (most often, the Treasurer)

31



Scene II: Initial Bargaining Session With The Union



- A sign that negotiations were handled well on both sides is that everybody probably feels a little bit like they didn't get what they wanted.

• Christopher Lloyd

32

**Scene II: Initial Bargaining Session
With The Union**



- Board team was late, and in a hurry

34

**Scene II: Initial Bargaining Session
With The Union**



- Superintendent makes comments about union team selections (in their presence)

35

**Scene II: Initial Bargaining Session
With The Union**



- Superintendent is unwilling to share
- financial information

36

**Scene II: Initial Bargaining Session
With The Union**



•Board team does not have proposals

37

**Scene II: Initial Bargaining Session
With The Union**



•Board team is changing bargaining process without notice

38

**Scene II: Initial Bargaining Session
With The Union**



•Superintendent is unwilling to listen to the union's issues ... and is offensive

39

**Scene II: Initial Bargaining Session
With The Union**



- ... and continues to be offensive ...

40

**Scene II: Initial Bargaining Session
With The Union**



- ... and probably isn't bargaining in "good faith" ...

41

**Scene II: Initial Bargaining Session
With The Union**



- Make introductions and start off on the right foot (with a positive tone)

42

**Scene II: Initial Bargaining Session
With The Union**



- Make sure the relevant team members are present and prepared

43

**Scene II: Initial Bargaining Session
With The Union**



- Be willing to share information and respond to public records requests

44

**Scene II: Initial Bargaining Session
With The Union**



- Follow prior bargaining practices, or agree to make changes

45

**Scene II: Initial Bargaining Session
With The Union**



- Listen to concerns

46

**Scene II: Initial Bargaining Session
With The Union**



- Avoid offensive comments
and focus on what is fair,
justifiable and AFFORDABLE

47

**Scene II: Initial Bargaining Session
With The Union**




- Consider what comparable
districts are doing

48




Scene III: Mediation Between District And Union



- Be open-minded and
- allow the mediation process to work

50

Scene III: Mediation Between District And Union



- Identify the issues causing the stalemate

51

Scene III: Mediation Between District And Union



- Help the mediator (and the union) understand the basis for your position

52

Scene III: Mediation Between District And Union



- Meet separately (caucus) with the mediator to help diffuse the situation

53

Scene III: Mediation Between District And Union



- The mediator may focus on the smaller details try to gain agreement on the larger issue

54

Scene III: Mediation Between District And Union



- The mediator tests each side's position and provides neutral perspective

55

Scene III: Mediation Between District And Union



- The mediator helps the parties prioritize issues

56

Scene III: Mediation Between District And Union



- The mediator provides insight into the union's perspectives

57

Scene III: Mediation Between District And Union



- **Considering the perspective gained, try to find solutions that are reasonable and fair**

58

Scene III: Mediation Between District And Union



- **Individual team members should NOT be having “conversations” with union members unless the**
 - **parties agree**

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Preparing for Negotiations


And Other Random Musings

with Beverly Meyer & Diana Brown,
Bricker & Eckler LLP




Our Presenters

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Our Presenters

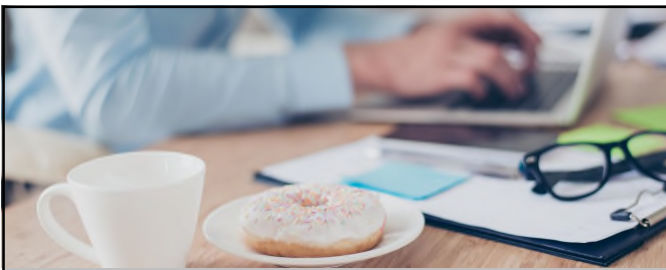


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Disclaimers

Yup, we're lawyers, but...

- We're not giving you legal advice
- Consult with your district's legal counsel regarding how best to address a specific situation



Times continue to be tough. Be kind to yourself. No one has all the answers.



Basics of Collective Bargaining

What do we mean by collective bargaining?

ORC 4117.01(G): Representatives of a public employer and of its employees have to "negotiate in good faith at reasonable times and places with respect to wages, hours, terms, and other conditions of employment" and also about "the continuation, modification, or deletion of an existing provision of a collective bargaining agreement." They must bargain "with the intention of reaching an agreement, or to resolve questions arising under the agreement." However, neither party is compelled to agree to a proposal or to make a concession.

- Initial and successor contracts, demands to bargain, MOUs



Do I really have to bargain about that?

If it's a mandatory subject of bargaining, yes.

Mandatory Subjects of Bargaining

R.C. 4117.08(A) states that bargaining is required for:

- all matters pertaining to wages, hours, or terms and other conditions of employment; and,
- the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.

But When is Bargaining Not Required? R.C. 4117.08(C)

Unless a public employer agrees otherwise in a collective bargaining agreement, the employer retains the right and responsibility to:

- Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;
- Direct, supervise, evaluate, or hire employees;
- Maintain and improve the efficiency and effectiveness of governmental operations;
- Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- Determine the adequacy of the work force;
- Determine the overall mission of the employer as a unit of government;
- Effectively manage the work force;
- Take actions to carry out the mission of the public employer as a governmental unit.

Mid-Term Bargaining

- Permissive v. mandatory subject of bargaining
- Effects bargaining v. decision bargaining
- Decided on a case-by-case basis (the *Youngstown* standard)



COVID-Issues

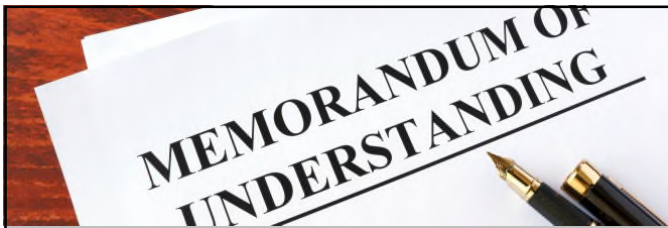
**In re Eastern Local
Teachers Association
OEA/NEA,
2020-ULP-10-0194
03.11.2021**

SERB Finding:
There was no probable cause to believe that the board of education committed an unfair labor practice when it dealt with issues surrounding the pandemic without bargaining. Charge dismissed with prejudice.

And then there's this...

If a mid-term decision modifies the existing terms of the CBA, the employer must first bargain to the point of agreement unless immediate action is required due to: 1) exigent circumstances that were unforeseen at the time of negotiations; or 2) legislative action occurring after the CBA is in effect requires changes to conform to the statute

In re Toledo City Schools , SERB 2001-005 (2001).



A note about bargaining an MOU

Time limitation; non-precedent-setting; maintain board flexibility

Is it time to negotiate?

Fear of the unknown is a huge motivator
Don't take a position unless you're totally informed

The role of "the rollover"
-Limited
-Broader

Preparing for Negotiations



- Management rights
- Financial standing of the district and the impact of ESSER (What does the 5-year forecast really say?)
- Authority of the negotiating team (What is the position of your board?)

Know your facts

- Changes in the law
- Grievances
- Pressure Points
- Insurance Options
- Comparables
- Costs
- Data, data, data (*see below- Union proposals we can expect to see*)





It's Time to Negotiate!



**First things first:
In-Person vs. Virtual Bargaining (or something in between)**

What does your contract say? Do you need to negotiate this?

Union proposals we can expect to see

- Fewer days with students (the fatigue factor)
- Increased professional development
- Calamity days intact
- Additional leave time/release time/personal days
- Recovery of sick leave/payment of attendance incentives
- Payout and/or carryover of personal days and vacation days
- Juneteenth as a paid holiday for all nonteaching employees

More union proposals we can expect to see

- Restrictions on reassignment/internal subbing
- Class sizes decreased (student learning/student discipline)
- Classroom assistance (student discipline/student learning)
- Limitations on use of evaluation ratings

Even more union proposals we can expect to see

- Reimbursement for classroom/safety expenses
- Technology stipends
- Significant wage increases
- Market adjustments for specific classifications
- Bonuses
- Additional stipends and supplemental contracts



Board proposals and the needs driving them

- More days of instruction and professional development
- More work from fewer people
- Addressing absenteeism
- No/fewer restrictions on reassignment/internal subbing
- Continued use of remote and synchronous learning
- Accountability through the evaluation process
- Addition of Title IX to grievance and disciplinary processes

More needs driving board proposals

- Medical marijuana and unlawful CBD prohibitions in drug testing policies
- Insurance premium increases and board's desire for flexibility in plan offerings/design
- External pressures on levies and cash reserves
- Employee retention (see above- Union proposals we can expect to see)
- Note: Consider your position on reopeners

US Supreme Court Declared Compulsory Fair Share Fees Unconstitutional in Janus

A friendly housekeeping reminder:
Have you addressed this in your CBA?



Other Topics Related to Bargaining



- Retire/rehire
- Wellness Programming and Incentives
- First Amendment Rights of Students and Implications on Staff
- Mask and Vaccine Mandates



Chances are, it's going to be a tough one.

People are not always as nice as we'd like them to be...

- ✓ These are unprecedented times.
- ✓ It is incredibly important that you take care of yourself.
- ✓ Share your burdens.
- ✓ Talk with like-minded folks.
- ✓ Ask for assistance.
- ✓ Ground yourself (and your board) in reality.



✓ And try to find some humor in all of this.

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Bargaining Methods and Strategies


George Albu, Mediator, and Dane Gaschen





•Traditional Bargaining vs. Interest Based Bargaining

2



•Traits of Traditional Bargaining

3



•Interest Based Bargaining

4

Interest Based Bargaining



•The Process

5

Interest Based Bargaining



•Traits of IBB

6

Interest Based Bargaining



•Advantages of IBB

7

Interest Based Bargaining



•Disadvantages of IBB

8

Interest Based Bargaining



•Keys to IBB Success

9



•Preparation – Know Your District

10

Preparation – Management Rights



•A Collective Bargaining Agreement imposes limitations on the employer’s otherwise unfettered right to manage the district. Except as expressly restricted by the Agreement, the employer retains the right to manage.

11

Preparation



•You Have The Union’s Issues – Now What Do You Do?

12

Preparation



•Financial Information

13

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Intensive Labor Negotiations Academy

BARGAINING METHODS AND STRATEGIES

Presented by

Dane A. Gaschen & George M. Albu

January 21, 2022



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I. Types of Bargaining

- A. Traditional
- B. Interest Based Bargaining

II. Traits of Traditional Bargaining:

- Specific written proposals are exchanged.
- Parties focus on taking and defending positions.
- Chief negotiators speak for each party.
- Each party maintains a united front.
- Often inflated proposals are submitted and argued vigorously.
- The degree of importance of any proposal is often concealed in order to demand a concession by the other party to drop a proposal.
- Uses power plays and tactics, including walking out of negotiations, anecdotal data, strikes, etc.
- Can create labor-management friction that may lead to grievances and litigation later.
- Often involves trading.

III. Interest Based Bargaining:

- A form of negotiating where the parties look for common ground and attempt to satisfy mutual interests through the bargaining process.
- Effort to look behind individual positions to determine the needs of the parties and whether there are mutually acceptable ways that labor and management can satisfy those needs.

A. Interest Based Bargaining Process

- Joint training precedes bargaining:
 - Group problem-solving.
 - Consensus decision making.
 - Communication skills.
 - Exercises designed to promote discussion and understanding of how mutual interests are identified and satisfied in the process.
 - Includes exercises that will tell how the parties will be able to work through the process during the actual negotiations.
- Generally, a facilitator is used.

- Team members sit interspersed around a table (rather than taking sides across a table).
- Starts with the identification of interests.
- Recorder writes down basic ideas and key words and keeps track of documents.
- Leads to the joint development of proposals.
- In the case of alternative proposals, the parties often use objective ranking criteria to select the proposal that ranks the highest.
- Management member and union member draft the language for the proposal.
- Consensus is reached.

B. Traits of Interest-Based Bargaining:

- Objective is to reach agreement by consensus – find something that everyone can accept and support even though that course of action might not be their first choice.
- All participants speak.
- Subcommittees may be formed to study courses of action.
- Internal differences are not concealed because all decisions must be reached by consensus.
- Free and open exchange of information.
- Emphasizes exploring the interests of the parties and how they can be reconciled.
- Focus is to determine the needs of the parties and whether there are mutually acceptable ways that labor and management can satisfy those needs.
- Bargaining over positions is avoided.
- Relies on techniques such as brainstorming, facilitation, and information sharing to promote open communication.
- Focuses on exchanging ideas and information to develop options, which are then evaluated both in terms of their effectiveness in resolving the problem and their acceptability to the parties.
- Ideas developed through brainstorming cannot be criticized.
- Objective criteria are used to select the appropriate resolution to an issue.
- Rooted in the idea that the fundamental interests of labor and management typically complement one another.

- People are separated from the problem.

C. Advantages of Interest Based Bargaining:

- Union leaders generally feel more ownership with the contract.
- Union leaders generally feel that discussions on issues (both economic and non-economic) are more meaningful.
- May lead to better personal/professional relationships between union and management.
- Considered a breach of interest-based “ethic” for a party to use power (i.e. strike or lockout) to resolve issues.
- Works most effectively when the employer is not facing some sort of crisis.
- Promotes creativity in finding solutions that will allow both sides to “win.”

D. Disadvantages of Interest Based Bargaining:

- Requires team members to be trained in IBB.
- Consultants and training can be expensive.
- Generally a longer process than traditional bargaining due to the need for training.
- Will not lead to quick resolution of a wage dispute where employer is in fiscal distress or employees are underpaid.
- Differing interests of labor and management are not easily reconciled to both sides’ satisfaction.
- Union membership may feel more separated from results of bargaining.
- Parties should not expect an IBB-negotiated agreement to be superior to a traditional one.
- IBB supposes that “interests” are common interests, but sometimes the interests of the workers are not the interests of the management.
- May raise false expectations of IBB and sour the parties’ relationship if the new method of negotiating doesn’t work.

E. Keys to Interest Based Bargaining Success

- Does each party have the authority to bargain or will negotiated agreements be subject to further review?
- Do the parties have the ability to clearly and effectively communicate?
- Is training and facilitation available? Knowledge of the process and third party assistance are necessary for success.
- Are both parties willing participants in the process?

- Are the parties' expectations reasonable?
- Is there sufficient trust between the parties?
- Is the environment right for labor-management cooperation?
- Is there internal consensus within both the union and the management to engage in IBB?
- Both parties must exhibit model cooperative behavior, both during negotiations and day-to-day operations.
- There should be evidence of labor-management cooperation during the past contract term.
- There must be sufficient time before the contract term expires to complete training and apply the process.
- Parties must be willing to fully share relevant bargaining information.
- Parties must be willing to forego power as the sole method of "winning."
- All parties must accept the process (including constituents).

IV. Preparation – Know Your District

A. History of bargaining

1. One of most important things to assess and keep in mind
 - Always go to impasse – never go to impasse; fact-finding
 - Don't get settlement until after contract expires – never let contract expire
 - Settlement occurs when the union goes around the team to the superintendent or to the Board vs. settlement occurs at the table and the Board stands by the team.
 - Union goes to superintendent
 - Union goes to Board – at Board meetings or indirectly
 - Settlement occurs after Union protests and brings pressure to bear
 - Board members support the team vs. board members engage in side bar negotiations without consulting with its negotiations team.
 - Board makes salary proposal or does not – initial proposal
2. Relationship with the union: Trust or no trust
3. Composition of the Union's team
 - Employees with longevity vs. less tenured employees

- Expectations may differ
 - Manner in which you have bargained before may not apply anymore
4. History of working with OEA/OAPSE LRC, if any
 5. Union – Are they looking for a change?
 6. Is it a new contract?

V. Preparation

A. Management Rights

It is a well-recognized arbitral principal that the Collective Bargaining Agreement imposes limitations on the employer's otherwise unfettered right to manage the enterprise. Except as expressly restricted by the Agreement, the employer retains the right of management. This is known as the Reserved Rights Doctrine; it lies at the foundation of modern arbitration practice.

Elkouri & Elkouri How Arbitration Works, Ch. 13.1.A (Kenneth May ed., 7th ed. 2012).

1. R.C. 4117.08(C) sets forth certain rights owned by Management, that unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117 of the Revised Code impairs the right and responsibility of each public employer to:
 - Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;
 - Direct, supervise, evaluate, and hire employees;
 - Maintain and improve the efficiency and effectiveness of governmental operations;
 - Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
 - Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
 - Determine the adequacy of the work force;
 - Determine the overall mission of the employer;
 - Effectively manage the work force;

- Take actions to carry out the mission of the public employer.
- B. Organization of materials
1. Proposals, counterproposals, background data, supporting data
 2. Notes of what is said during negotiations
 3. Status of issues
 4. Charts; notebook
- C. Choosing the right team
1. What's the history
 2. Is the time right to change the way things have always been done?
 3. Superintendent
 4. Board member
 5. Others
- D. Prepare and Communicate with your Board
1. Importance of
 - Keeping your Board informed
 - Confidentiality
 - Support for the Board's team
- E. Identify your important/major issues as soon as possible

VI. You Have The Union's Issues – Now What Do You Do? – Prepare

- A. Gather relevant contracts – once you know issues – organize language from other districts
- B. What do their proposals cost?
- C. How will it affect the operation at all levels in the district
- D. Is it an elementary school issue, a high school issue – where is it coming from?

VII. Financial Information – Keep Your Eye on the Prize

- A. 5 year forecast

B. .412 certificate

The school district has in effect the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel and programs for all the days set forth in its adopted school calendars for the current fiscal year and for a number of days in succeeding fiscal years equal to the number of days instruction was held or is scheduled for the current fiscal year.

The certificate shall be signed by the treasurer and president of the board of education and the superintendent.

Penalty for violation is a fine not to exceed \$10,000.

C. Identify relevant comparison group

- County
- Sports League
- What does the Union usually argue is the relevant comparison group

D. Salary schedules for comparable districts

E. Training and experience grid

- T & E grid should run to as many steps as there are years of experience for teachers on staff
- This will assist district in determining how many bums would benefit from an additional step on the salary schedule; if it's a possibility the district may add a step or steps as part of the negotiations
- Determine how many people are at the top of the schedule or will be at the top during the next three years

F. History of salary increases in the district - last 3-5 years

- Increases over the term of last contract

G. Salary

- Cost of step increase (include STRS)
- Cost of 1% on base

VIII. Communication of Expectations and Rules

A. Language – don't leave home without it

B. Number of issues to bring to the table – common understanding

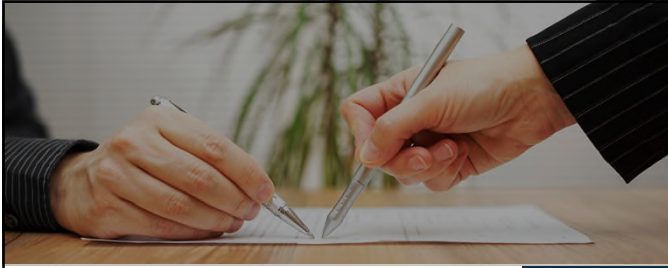
IX. Chose Your Battles – What Tone Do You Want

- Before negotiations
- During negotiations

X. Making History – Be Aware of the Legacy that You Leave for the Next Negotiations

- Elephant's memory
- Don't be naïve – you will be taken advantage of

The foregoing is a summary of legal developments, and this document and the accompanying presentation are not intended to offer legal advice. Please be sure to consult the full text of legislation, regulations, and cases. Also, please be sure to consult competent legal counsel for specific legal issues.



Dealing with labor shortages and other emerging issues

with Jason Stuckey and Dave Lampe



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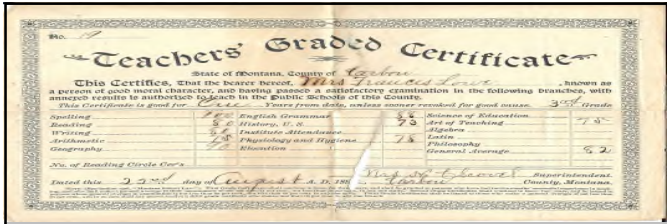
Substitute Teacher Flexibility

Substitute Teacher Flexibility

- In accordance with a District's set of educational requirements or standards, permits the employment of an individual without a post secondary degree as a substitute teacher.
- State Board must issue non-renewable temporary substitute license for these individuals.
- Individuals must be deemed to be of good moral character.

Substitute Teacher Flexibility Considerations

- Bargaining implications
- Long-term substitute vs. causal day-to-day substitute
- R.C. 3319.10 requirements:
 - Assignment to one specific position for sixty days; entitles the substitute to sick leave, other local privileges, and a salary not less than the minimum salary on the current adopted salary schedule.
- Student Teachers (beware of any institutional prohibitions).
- Paraprofessionals



Reinstatement Licenses

Reinstatement Licenses

- ODE can issue, nonrenewable reinstatement licenses to educators whose associate or professional licenses have lapsed for at least one year.
- Will be issued at request of employing school district.
- May only request a reinstatement license for the same subject(s) and grade level(s) as their expired associate or professional license.

Reinstatement Licenses

- Educators working under a reinstatement license will be considered properly certified in the reinstatement license area while completing requirements.



School Nurses

School Nurse Flexibility

- HB 6 amended R.C. 3319.221, in May of 2021, eliminating the ODE pupil services license requirement for school nurses
- Still required to hold bachelors degree and registered nurse license
- Must still submit to ODE background check





HB 122 – Telehealth

Telehealth Services

- Effective, March 22, 2022, HB 122 establishes and modifies requirements regarding the provision of telehealth services.
- Permits school psychologists, audiologists and speech language pathologists, occupational therapists, physical therapists, occupational therapy assistants and physical therapy assistants to provide telehealth services.
- Must meet the telehealth requirements of each licensing board.



COVID Related Closures

COVID School closure considerations

- Language in CBA will be critical.
- Do you have a calamity day provision in your contract and does it apply to this situation?
- Who needs to report to work?
- What duties can you assign non-teaching staff?



Teacher Evaluations

- Examine your CBA to ensure building administrators are meeting/complying with ALL observation/walkthrough and any required feedback/conference deadlines.
- Compliance with deadlines is crucial.
- Virtual vs. in-person observation/walkthroughs.

Administrator Evaluations

- R.C. 3319.02(D)(2)(c)(i) requires at least one evaluation in the year(s) an administrator's contract is not due to expire.
 - Failure to conduct this evaluation could lead to automatic reemployment, even if all other evaluations are properly completed. *Skaggs v. Blanchester*
- R.C. 3319.02(D)(2)(c)(ii) requires a preliminary and final evaluation in the year an administrator contract expires. Written copy of preliminary evaluation must be provided to administrator sixty days prior to any board action.
- Written copy of the final evaluation shall be provided to the administrator at least five days prior to the board's acting to renew or not renew the contract.



Bus Driver Training

- Budget Bill required ODE to develop an online training program for the classroom portion of pre-service and annual in-service training for school bus driver certification. R.C. 3327.101
- ODE proposed a new rule 3301-83-10, but the new rule has not been enacted. Stay tuned.

Collaboration Grants

- House Bill 110 established a Transportation Collaboration Fund for FY22 and FY23
- \$250,000 allotted each fiscal year for the grant
- Traditional public districts are eligible for funding
- Maximum of \$10,000 per year per district, renewable in FY23
- Goal is to encourage: Shared services, shared resource management, routing consolidation, and other activities that help reduce transportation costs.

Transportation Compliance and Monitoring

- R.C. 3327.021 requires ODE to monitor each city, local and exempted village's compliance with transportation responsibilities; specifically those responsibilities in R.C. 3327.01, 3327.016 and 3327.017 (B).
- If it is determined a district is non-compliant for a "consistent or prolonged period," the ODE shall deduct from the district's payment for student transportation the total daily amount of that payment, as computed by the department, for each day that the district is not in compliance.

Transportation Compliance and Monitoring

- "Non-Compliance" – failure to provide the provisions set forth in ORC 3327.01, 3327.016 and 3327.017 (B)
- "Consistent" - means ten total school days of non-compliance in any given semester
- "Prolonged" - means ten consecutive days of non-compliance

Transportation Compliance and Monitoring Considerations

- Provisions may still impact districts who contract for transportation services.
- Does your district have knowledge of the contractor's labor shortage?
- What is your district doing to ensure compliance?



Compensation for Supplemental Contracts

Compensation for Supplemental Contracts

- Proration/cancellation of supplemental contracts for cancelled or shortened seasons.
- Such language likely needs to be bargained with union.
- Consider an MOU or a proposal in upcoming negotiations.
- Consider amending supplemental contract language.



Compensation Strategies for Labor Shortages

Compensation Strategies for Labor Shortages (ESSER Funds)

- COVID Hazard Pay.
- Staff retention bonuses.
- Additional Pay to staff for new duties.
- Increasing substitute teacher daily rate of pay.

CAUTION: Some employees must be paid through the general fund, unless an exception exists.

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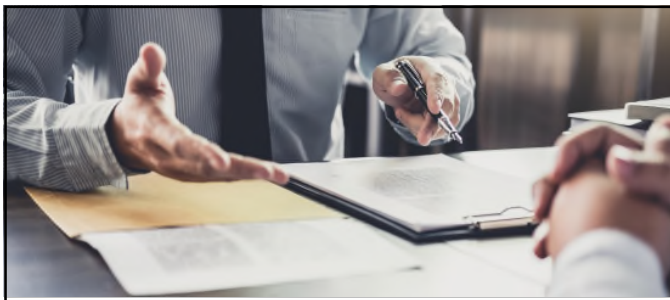




When Tensions Rise: Managing ULPs, Strike Threats & Strikes

Kate V. Davis and Nicole M. Donovan





Employer Unfair Labor Practices

**Employer Unfair Labor Practices
R.C. 4117.11(A)(1):**

Interference with rights under the Act

- Under 4117.11 of the Ohio Revised Code: (A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117 of the Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

R.C. 4117.11(A)(1) (cont.)

The most common application or questions for application occur in:

- Investigatory interviews of employees
- Questioning of employees who are witnesses
- Performance evaluations
- Instructional meetings

R.C. 4117.11(A)(1) (cont.)

- Representation rights in interviews
- Campaign Activity
- Retaliation

R.C. 4117.11(A)(1)

SERB Op. 2020-001: The City of Youngstown violated Section 4117.11 (A)(1) of the Ohio Revised Code when it retaliated against, interfered with, or otherwise deterred the Union from exercising its right to arbitrate a radio safety issue by threatening to eliminate Battalion Chief bargaining unit positions if the City lost at arbitration.

R.C. 4117.11(A)(2)

Creation of, domination of, interference with the union

- Under 4117.11 of the Ohio Revise Code: (A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization, or contribute financial or other support to it; except that a public employer may permit employees to confer with it during working hours without loss of time or pay, permit the exclusive representative to use the facilities of the public employer for membership or other meetings, or permit the exclusive representative to use the internal mail system or other internal communications system

R.C. 4117.11(A)(2) (cont.)

- Alleged violations of 4117.11(A)(2) address the formation, operation, and choice of unions by employees. The Board has instituted standards, borrowing heavily from the National Labor Relations Act (NLRA) as applied by the National Labor Relations Board (NLRB) and approved by federal courts.
- In the event an employer believes an organizational campaign, a campaign by a rival union, or a decertification election campaign is underway, it is best that the employer research the standards established by SERB for its conduct.

R.C. 4117.11(A)(2) (cont.)

- There is no "scienter" requirement under R.C. Section 4117.11(A)(2).
- The employer does not have a good faith defense. (See Garment Workers (Bernard Altman Texas Corp.) v. NLRB, 366 U.S. 731, 48 LRRM 2251 (1961), where an employer's "good faith" defense was rejected on the grounds that it would frustrate employee rights.

R.C. 4117.11(A)(2) (cont.)

SERB held that the school district unlawfully interfered with formation of employee organization where:

- District initiated formation of support liaison committee;
- Set up committee meetings;
- Controlled selection of committee members;
- District superintendent and other employer representatives attended committee meetings;
- District compensated employees who attended meetings during working hours;
- Meetings were held on district's premises; and
- Minutes were taken and distributed at direction of district's superintendent.

R.C. 4117.11(A)(3)

Discrimination based on protected rights

- Under 4117.11 of the Ohio Revised Code: (A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(3) Discriminate in regard to hire or tenure of employment or any term or condition of employment on the basis of the exercise of rights guaranteed by Chapter 4117. of the Revised Code. Nothing precludes any employer from making and enforcing an agreement pursuant to division (C) of section 4117.09 of the Revised Code.

R.C. 4117.11(A)(3) (cont.)

- Frequently the allegations of R.C. 4117.11(A)(3) will be in conjunction with or related to a discipline matter, a work assignment, and be one of the several actions filed against the employer. Other actions might include grievances, OCRC and/or EEOC charges, FMLA, FLSA or a variety of federal and state claims.

R.C. 4117.11(A)(3) (cont.)

- The Complainant must create a “presumption” of union animus, by showing that the employer’s action was taken to discriminate against the employee for the exercise of rights protected by O.R.C. Chapter 4117.
- Elements for an (A)(3) violation:
 - a. employee must have suffered some type of “adverse action”;
 - b. employee must have engaged in “protected activity”;
 - c. the Employer must have been “motivated” to take the “adverse action” because of the employee’s “protected activity”.

R.C. 4117.11(A)(3) (cont.)

- What is anti-union animus?
- Union sentiments that may affect various management actions and result in union organizers, members or representatives being harassed;
- The Respondent is then given the opportunity to rebut the presumption by presenting evidence that shows legitimate, nondiscriminatory reasons for its decision;
- The Board then determines, by a preponderance of the evidence, whether an unfair labor practice has occurred.

R.C. 4117.11(A)(3) (cont.)

- Knowledge of Protected Activity:
- A complainant employee must establish actual or “imputed” knowledge by the Employer or its agents to establish an allegation of discrimination under 4117.11(A)(3). The protected activity can include the communication by the employee to the Employer, or its agents, of visible union activity or an assertion of a right under RC 4117 (e.g. request for union representation). The filing of a grievance can also be construed as imputed knowledge to the Employer.

R.C. 4117.11(A)(4)

Retaliation

- Under 4117.11 of the Ohio Revised Code: (A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(4) Discharge or otherwise discriminate against an employee because he has filed charges or given testimony under Chapter 4117. of the Revised Code.

- Testifying in a Board-conducted proceeding is activity protected by Chapter 4117. The Employer is obligated to compensate individuals subpoenaed to testify if they attend the hearing for that purpose, regardless of whether they are called to testify, or not called to testify. OAC 4117-1-09.

R.C. 4117.11(A)(5)

Refusal to bargain

- Under 4117.11 of the Ohio Revised Code: (A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code

Examples of Mandatory Subjects of Bargaining:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Reassignment of work • Work rules or policies • Layoffs • Promotions • Part-time workers • Discipline and discipline policies • Hours of unemployment, schedules • Insurance • Management Rights • New employees | <ul style="list-style-type: none"> • Residency • Sick leave • Voluntary retirement • Wages • Dress Code • Employee evaluations • Drug testing policies • Class periods • Seniority |
|---|---|

R.C. 4117.11(A)(5) (cont.)

- Other types of failure to bargain:
 - Unilateral implementation of “last best offer”
 - Direct dealing
 - Surface bargaining
 - Change of practice/policy during negotiations

R.C. 4117.11(A)(6)

Pattern or practice of refusal to process grievances

- Under 4117.11 of the Ohio Revise Code: (A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(6) Establish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances

R.C. 4117.11(A)(7)

Lockouts

- Under 4117.11 of the Ohio Revise Code: (A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(7) Lock out or otherwise prevent employees from performing their regularly assigned duties where an object thereof is to bring pressure on the employees or an employee organization to compromise or capitulate to the employer's terms regarding a labor relations dispute

R.C. 4117.11(A)(8)

Causing the Union to violate the act

- Under 4117.11 of the Ohio Revised Code: (A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(8) Cause or attempt to cause an employee organization, its agents, or representatives to violate division (B) of this section.

SERB v. Hamilton County Sheriff, 23 OPER 249 (Employer committed ULP by refusing to allow employee's chosen union representative to attend grievance meeting; employee was told he had to postpone the meeting to obtain another representative or go forward without representation).



Union Unfair Labor Practices

R.C. 4117.11(B)(1)

Coercion or Restraint Regarding Employee Rights

- Under 4117.11 of the Ohio Revised Code: (B) It is an unfair labor practice for an employee organization, its agents, or public employees to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances.

R.C. 4117.11(B)(2)

Causing the Employer to Commit an Unfair Labor Practice

- Under 4117.11 of the Ohio Revise Code: (B) It is an unfair labor practice for an employee organization, its agents, or public employees to:

(2) Cause or attempt to cause an employer to violate division (A) of this section.

Ohio Department of Highway Safety (Bureau of Motor Vehicles), 11 OPER (LRP) P1046 (OPER (LRP) 1993)

R.C. 4117.11(B)(3)

Refusal to Bargain

- Under 4117.11 of the Ohio Revise Code: (B) It is an unfair labor practice for an employee organization, its agents, or public employees to:

(3) Refuse to bargain collectively with a public employer if the employee organization is recognized as the exclusive representative or certified as the exclusive representative of public employees in a bargaining unit.

R.C. 4117.11(B)(4)

Boycotts or picketing related to jurisdictional work disputes

- Under 4117.11 of the Ohio Revise Code: (B) It is an unfair labor practice for an employee organization, its agents, or public employees to:

(4) Call, institute, maintain, or conduct a boycott against any public employer, or picket any place of business of a public employer, on account of any jurisdictional work dispute.

R.C. 4117.11(B)(5)

Strikes and boycotts against neutral 3rd parties, coerced recognition

- Under 4117.11 of the Ohio Revised Code: (B) It is an unfair labor practice for an employee organization, its agents, or public employees to:

(5) Induce or encourage any individual employed by any person to engage in a strike in violation of Chapter 4117. of the Revised Code or refusal to handle goods or perform services; or threaten, coerce, or restrain any person where an object thereof is to force or require any public employee to cease dealing or doing business with any other person, or force or require a public employer to recognize for representation purposes an employee organization not certified by the state employment relations board.

R.C. 4117.11(B)(6)

Failure to fairly represent employees

- Under 4117.11 of the Ohio Revised Code: (B) It is an unfair labor practice for an employee organization, its agents, or public employees to:

(6) Fail to fairly represent all public employees in a bargaining unit

The Ohio Supreme Court upheld a court of appeals finding that SERB did not abuse its discretion when dismissing a former employee's unfair labor practice charge against his former employer and union for not proceeding to arbitration with his grievance. *State ex re. Stewart v. State Empl. Relations Bd.*, (2006) 108 Ohio St. 3d 203. The collective bargaining agreement between the union and employer provides that a grievance may only proceed to arbitration upon the Union's finding of merit and its issuance of a referral to arbitration. *Thus, an employee lacks any independent right to compel the Union and Employer to arbitrate.*

R.C. 4117.11(B)(7)

Residential or business picketing

- Under 4117.11 of the Ohio Revised Code: (B) It is an unfair labor practice for an employee organization, its agents, or public employees to:

(7) Induce or encourage any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer.

R.C. 4117.11(B)(7) (cont.)

- **Portage County Educators Assoc. for Developmental Disabilities-Unit B, OEA/NEA v. State Employment Relations Board**, 2020-Ohio-7004, 2020 WL 7863314 (Ct. App. 11th Dist. Portage County, Dec. 31, 2020) (court held (B)(7) is an *unconstitutional restriction on speech*.)
- **Note:** On April 28, 2021, the Ohio Supreme Court certified a conflict between the holding in this case and the decision of the Seventh Appellate District in Harrison Hills Teachers Assn. v. State Employment Relations Board (2016-Ohio-4661). (Ohio Supreme Court case nos. 2021-0191 and 2021-0190 consolidated.) Oral argument scheduled for Wednesday, **February 9, 2022**.

R.C. 4117.11(B)(8) (cont.)

Picketing or striking without notice

- Under 4117.11 of the Ohio Revise Code: (B) It is an unfair labor practice for an employee organization, its agents, or public employees to:

(8) Engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by the written agreement of both.



Remedies

If SERB finds that an unfair labor practice has occurred it may:

- Take affirmative action as will effectuate the policies of Chapter 4117. SERB v. East Palestine City School Dist. Bd of Ed., 1988 SERB 4-57 (7th Dist. Ct. App., 6-19-88);
- Order Respondent to cease and desist from committing unfair labor practices;
- Require a posting;
- Order reinstatement with or without back pay (make the injured party whole).



The Path Toward Strike

What is a "Strike"?

- "Strike" means continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment.
- "Strike" **does not** include a stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment that are **abnormal** to the place of employment.
- ORC 4117.01(H)

What happens before a strike?

- Authorization
- Strike Vote
- Notice



Preventing a Strike

- If a strike is "unauthorized"
 - "Blue flu"
 - Improper notice
- If a strike presents a clear and present danger to the public

What is an "unauthorized strike"?

• "Unauthorized strike" includes, but is not limited to, concerted action during the term or extended term of a collective bargaining agreement or during the pendency of the settlement procedures *** in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment.

• (This can be partial or intermittent.) **ORC 4117.01(I)**

Ramifications for unauthorized strikes

- Deduct two days' pay for each day unauthorized strike continues
- Wages frozen for one year
- Possible discipline or termination under Board Policy

Clear and present danger procedure

- Injunction action in court of common pleas
- Determination by SERB



What happens when an employee chooses to strike?

- Loss in pay
- Loss in benefits including health insurance
- Access and privileges revoked

Considerations Before You Dig In

- Is this your Last, Best and Final Offer? Are you SURE?
- Board support
- Community support
- Consider student involvement
- Safety
- Ability to continue operations
- Expense
- The Future



Who is on your Strike Team?

What's Your Strike Plan?

- | | |
|--|---|
| <ul style="list-style-type: none"> • What to expect from the union • Strategic Planning Team • Strike headquarters and communications plan • Board action prior to strike • Security and law enforcement • Substitutes | <ul style="list-style-type: none"> • What about other unions? • Communications prior to, during and after the strike • Roles and responsibilities of Team members • Extracurricular activities • COBRA and benefits • Legal Actions |
|--|---|



How is a Strike Resolved?



How is a strike different NOW?

Thank you!

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BASA AND BRICKER'S INTENSIVE LABOR RELATIONS ACADEMY
WHEN TENSION RISES: MANAGING ULPS, STRIKE THREATS AND STRIKES

NICOLE DONOVSKY AND KATE DAVIS
JANUARY 21, 2022

I. EMPLOYER UNFAIR LABOR PRACTICES

A. RC 4117.11(A)(1) Interference with rights under Act.

Under 4117.11 of the Ohio Revised Code: (A) *It is an unfair labor practice for a public employer, its agents, or representatives to:*

(1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117 of the Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

B. Application

This section will concentrate on the “representation rights” SERB has established, defined, and applied in various circumstances. The right to representation is the most common operational issue for Employers. The most common application or questions for application occur in:

- Investigatory interviews of employees
- Questioning of employees who are witnesses
- Performance evaluations
- Instructional meetings

1. Representation rights in interviews:

One way for an employee to exercise her rights is to request the presence of a shop steward during an investigatory interview or disciplinary meeting. In re City of Cleveland, SERB 97-011 (6-30-97).

To establish an O.R.C. § 4117.11(A)(1) violation for the denial of the right to representation, all four elements must be proven:

- The interview was investigatory. A meeting is investigatory if its purpose is to elicit information pertaining to the conduct of the employee being interviewed.
- The employee requested the presence of a union representative and that such request WAS DENIED. The employee must ask for a union representative. The

employer does not have a duty to inform the employee of the right or offer the employee the right to have a representative present.

- The employee reasonably believed the interview might result in disciplinary action. The right to representation arises when a significant purpose of the interview is to obtain facts to support disciplinary action that is probable or that is being seriously considered, combined with employees' knowledge of that purpose. Whether an individual had a reasonable belief must be determined using an objective basis.

Subsequent to the employer's denial of representation, the employer compelled the employee to continue with the interview.

- The employee does not have a right to a union representative in order to question the employee directly in an investigatory interview conducted by the employer. However, when the union representative is permitted to elicit facts in private conversation with the employee and then present those favorable facts to the employer, the union representative is not silenced. The union representative's role does not include telling an employee not to answer questions.
- b. Limitations: O.R.C. § 4117.03(A)(3) cannot be applied so as to give rise to representational rights every time there is communication between employees and their supervisors. If the encounter with the employee is routine supervisory, instructional, or director the presence of a union representative is not required.

2. Campaign Activity

It is well-settled that "no wage increase or other benefit should be granted by an employer during a representation election campaign." In re Lucas County Bd.of Mental Retardation and Developmental Disabilities, SERB 86-048, at 348 (12-4-86), affirmed by In re Chester Twp Police Dept, 92-014, at 3-45.

Exceptions to the general rule prohibiting an increase in benefits to employees pending an election are as follows:

- a. An employer becomes obligated to make a wage increase "before representation becomes an issue".
- b. The increased wages follow an established practice or custom; or
- c. The increased wages are required by law. Id.

During an election process, a merit-based increase could certainly "be readily construed as an attempt to obtain a vote for no representative from employees in a proposed bargaining unit." Id.

3. Retaliation

The claim of retaliation for the exercise of rights under RC 4117.11(A)(1) will commonly be alleged in connection with a charge of discrimination, RC 4117.11(A)(3) and/or discharge, RC 4117.11(A)(4).

- SERB Op. 2020-001: Whether the City of Youngstown violated Section 4117.11 (A)(1) of the Ohio Revised Code when it retaliated against, interfered with, or otherwise deterred the Union from exercising its right to arbitrate a radio safety issue by threatening to eliminate Battalion Chief bargaining unit positions if the City lost at arbitration.
- The City of Youngstown violated Section 4117.11 (A)(1) of the Ohio Revised Code when, in the absence of any superseding managerial right, it made statements and issued ultimatums which appeared to force IAFF Local 312 into choosing between either ensuring that its members possessed proper communications equipment on the fire site or ensuring that its members were protected by the presence of a second highly trained Battalion Chief on the fire site acting as Safety Officer.

C. R.C. 4117.11(A)(2) Creation of, domination of, interference with the union

(2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization, or contribute financial or other support to it; except that a public employer may permit employees to confer with it during working hours without loss of time or pay, permit the exclusive representative to use the facilities of the public employer for membership or other meetings, or permit the exclusive representative to use the internal mail system or other internal communications system;

1. General: Alleged violations of 4117.11(A)(2) address the formation, operation, and choice of unions by employees. The Board has instituted standards, borrowing heavily from the National Labor Relations Act (NLRA) as applied by the National Labor Relations Board (NLRB) and approved by federal courts.

In the event an employer believes an organizational campaign, a campaign by a rival union, or a decertification election campaign is underway, it is best that the employer research the standards established by SERB for its conduct.

2. Standard:
 - a. Employer domination of an employee organization;
 - b. Employer interference with the formation or administration of an employee organization; and,
3. Employer support of an employee organization.
 - There is no scienter requirement under R.C. Section 4117.11(A)(2).
 - The employer does not have a good faith defense. (See Garment Workers (Bernard Altman Texas Corp.) v. NLRB, 366 U.S. 731, 48 LRRM 2251 (1961), where an employer’s “good faith” defense was rejected on the grounds that it would frustrate employee rights.

- The conduct of a supervisor who is a bargaining unit member in a union election setting will be imputed to the employer where there is evidence that the employer encouraged, authorized, or ratified such conduct or the employer acted in such a manner as to lead the employees to reasonably believe that the supervisors were acting on behalf of management. See A.T. & K. Euters., 264 NLRB 1278, 111 LRRM 1371 (1982); and Quinn Co., 273 NLRB 795, 118 LRRM, 239 (1984).
- School district unlawfully interfered with union’s organizing activities by promulgating solicitation/distribution policy which prohibited pro or anti-union material from being posted or distributed on premises. Lakota Local School District Board of Education, 6 OPER (LRP) P6010 (OPER (LRP) 1988).
- SERB held that the school district unlawfully interfered with formation of employee organization where:
 - a. District initiated formation of support liaison committee;
 - b. Set up committee meetings;
 - c. Controlled selection of committee members;
 - d. District superintendent and other employer representatives attended committee meetings;
 - e. District compensated employees who attended meetings during working hours;
 - f. Meetings were held on district’s premises; and
 - g. Minutes were taken and distributed at direction of district’s superintendent.

D. RC 4117.11(A)(3) Discrimination Based on Protected Rights:

(3) Discriminate in regard to hire or tenure of employment or any term or condition of employment on the basis of the exercise of rights guaranteed by Chapter 4117. of the Revised Code. Nothing precludes any employer from making and enforcing an agreement pursuant to division (C) of section 4117.09 of the Revised Code.

1. Generally, to most employers, this is the single most confusing and misunderstood unfair labor practice charge. Frequently the allegations of R.C. 4117.11(A)(3) will be in conjunction with or related to a discipline matter, a work assignment, and be one of the several actions filed against the employer. Other actions might include grievances, OCRC and/or EEOC charges, FMLA, FLSA or a variety of federal and state claims.

In those instances where there is a grievance filed by an employee with the same or similar fact pattern as with the unfair labor practice charge, the initial consideration is to file a “motion for deferral to arbitration”.

2. Elements and Proof of an (A)(3) violation, discrimination

Standard from Ohio Supreme Court

The Ohio Supreme Court articulated the “in part” test to be applied by SERB to determine whether an individual has been discriminated against on the basis of protected activity in violation of O.R.C. 4117.11(A)(1) and (A)(3). In re State Emp. Relations Bd. v. Adena Local School Dist. Bd. of Edn. (1993), 66 Ohio St.3d 485, 498, 1993 SERB 4-43, 4-49 (“Adena”). The *Adena* standard mandates that SERB’s primary focus be on the employer’s motive. SERB interpreted and applied the Ohio Supreme Court’s *Adena* opinion in *In re Fort Frye Local School Dist. Bd. of Ed.*, SERB 94-017, p. 3-104 (10-14-94) (“*Ft. Frye*”), and held that the *Adena* standard involves a three-step process:

Elements and Process

The Complainant must create a “presumption” of union animus, by showing that the employer’s action was taken to discriminate against the employee for the exercise of rights protected by O.R.C. Chapter 4117.

Elements for an (A)(3) violation

- a. employee must have suffered some type of “adverse action”;
- b. employee must have engaged in “protected activity” (refer to discussion of employee’s protected activities); Note: also concerted activity
- c. the Employer must have been “motivated” to take the “adverse action” because of the employee’s “protected activity”.

What is anti-union animus?

- Union sentiments that may affect various management actions and result in union organizers, members or representatives being harassed;
- The Respondent is then given the opportunity to rebut the presumption by presenting evidence that shows legitimate, nondiscriminatory reasons for its decision;
- The Board then determines, by a preponderance of the evidence, whether an unfair labor practice has occurred.

4. Knowledge of Protected Activity

A complainant employee must establish actual or “imputed” knowledge by the Employer or its agents to establish an allegation of discrimination under 4117.11(A)(3). The protected activity can include the communication by the employee to the Employer, or its agents, of visible union activity or an assertion of a right under RC 4117 (e.g. request for union representation). The filing of a grievance can also be construed as imputed knowledge to the Employer.

See Wood County Soldier’s Relief Comm. v. SERB, 1988 SERB 4-14 (CP Wood, 1-19-88) and In re Adena Local School Dist. Bd. of Ed., SERB 89-034 (12-29-89), Rev’d on other grounds by SERB v. Adena Local School Dist. Bd. of Ed., (1993) 66 Ohio St. 3d 485, 1993-Ohio-118, 1993 SERB 4-43.

Where evidence shows that the nonrenewal of a striking teacher's contract was not based, in part, on the protected activity of post-strike social ostracism of non-striking teachers, but on incidents of physical and verbal intimidation by the teacher toward non-striking teachers, students, and administrators, the Board will not find an unfair labor practice. In re Ft. Frye Local School Dist Bd of Ed, SERB 94-016 (10-14-94).

E. RC 4117.11(A)(4) Retaliation for Filing or Participating in SERB actions

(4) Discharge or otherwise discriminate against an employee because he has filed charges or given testimony under Chapter 4117. of the Revised Code

1. General.

Testifying in a Board-conducted proceeding is activity protected by Chapter 4117. The Employer is obligated to compensate individuals subpoenaed to testify if they attend the hearing for that purpose, regardless of whether they are called to testify, or not called to testify. OAC 4117-1-09.

F. RC 4117.11(A)(5) Refusal to Bargain:

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code

1. General

The refusal to bargain charge has a much broader application than is apparent from the term. Curiously, this standard is stated in the negative, rather than in the positive, in the statute. There are several key elements to maintain a charge. These include:

- a. Exclusive bargaining agent (the union has been certified to represent);
- b. Negotiate in good faith;
- c. Follow negotiation procedure in the Act or as agreed by the parties;
- d. Refrain from changing mandatory items of employment without first discussing those with the union;
- e. Follow the terms of agreement;
- f. respect the union's role as the exclusive representative, avoid direct dealing.

2. Management Rights RC 4117.08(C)

Although Chapter 4117 outlines the "inherent rights of management", these rights can be altered by a collective bargaining agreement. The Act cleverly includes the phrase "unless a public employer agrees otherwise in a collective bargaining agreement..."

3. Duty to bargain subjects/Mandatory topics

Topics include, but are not limited to, the following:

- Reassignment of work

- Work rules or policies
 - Layoffs
 - Promotions
 - Part-time workers
 - Discipline and discipline policies
 - Hours of unemployment, schedules
 - Insurance
 - Management Rights
 - New employees
 - Residency
 - Sick leave
 - Voluntary retirement
 - Wages
 - Dress Code
 - Employee evaluations
 - Drug testing policies
 - Class periods
 - Seniority
- Failure to bargain wellness stipend change not an unfair labor practice:

A union argued the State Employment Relations Board (SERB) abused its discretion by dismissing the union’s unfair labor practice charge for lack of probable cause. The charge stemmed from a change in the wellness program incentive. Instead of receiving a cash incentive for completion of the wellness program, members would pay a reduced health insurance premium. The union alleged this unilateral change increased premiums for unit members that did not participate in the wellness program. SERB noted the matter appeared to be a purely contractual issue that should be addressed through the parties’ binding arbitration process.

The court ruled SERB did not abuse its discretion. The employees are still responsible for paying 15% of the health insurance premium, and the CBA expressly provided that the employer could change carriers or methods of providing insurance coverage. Nothing in the CBA precluded insurance premiums from rising throughout the course of the agreement. In addition, the new policy did not create a mandatory increase in premium payments for those not participating in the wellness program; rather, it offered an opportunity to reduce the premium. “While appellant could consider this a distinction without a difference, there is no penalty for those who decline to participate in the wellness plan only an opportunity for a reduction.” State ex rel. Teamsters Local Union No. 284 v. State Employment Relations Board, 2021-Ohio-3318, 2021 WL 4279754 (10th Dist. Franklin County, Sept. 21, 2021).

- Duty to bargain FMLA policy changes:

The Franklin County Court of Appeals ruled that the State Employment Relations Board “SERB” abused its discretion in dismissing an unfair labor practice (ULP) charge concerning a county’s unilateral change to FMLA leave accrual. The county unilaterally changed from using a “measured forward” method of calculating FMLA leave to a “measured backward” calculation method. The court found the change would substantively impact the timing of leave accrual for employees, and was a change to the wages, hours, or terms and other conditions of employment. “For example, unlike the measured forward method, the measured backward method precludes the possibility of an employee taking 11 weeks of leave at the end of a one-year period and then immediately taking another 12 weeks of leave to begin the next one-year period.” The court also found the fact that the calculation method had not been negotiated previously was inconsequential. State ex rel. Professionals Guild of Ohio v. [Ohio] State Employment Relations Board, 2020-Ohio-3289 (10th Dist. Franklin Cnty., June 11, 2020)

- No violation regarding implementation of mask policy:

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally implementing a Mask, Vaccination and Testing Policy directly to its members, which also contained a disciplinary component. Information gathered during the investigation revealed that, pursuant to the first requirement of In re SERB v Youngstown City School Dist Bd of Ed, SERB 95-010 (6-30-95), some of the provisions in the original Policy did have an effect on the wages, hours and terms and conditions of employment, but, after meeting with all of the Unions, the revised Policy removed any monetary requirements for any City employee and permitted all employees to participate in COVID testing and/or vaccination on City time. Under the second requirement, the City has bargained, with all its bargaining units, not just this unit, for the management right to provide a safe workplace, which in this instance, the City followed the guidelines set forth by the CDC and the County’s Department of Public Health regarding the escalating COVID-19 pandemic in the area. The third requirement was met when the City met on at least two (2) occasions with all of the Unions and requested feedback, which resulted in the revised Policy that was issued to all employees on August 27, 2021 and was prior to the instant charge being filed on September 7, 2021. Based on the totality of the circumstances, the City’s actions do not rise to the level of an (A)(5) violation of the statute.

The Union did not provide sufficient information or documentation to support the (A)(1) violation of the statute. The Union also did not allege an (A)(3) violation of the statute regarding the August 24, 2021 matter. 2021-ULP-09-0131 Dayton Building and Construction Trades Council, AFL-CIO v. City of Dayton.

6. Unilateral implementation of “last best offer”

An employer may violate this provision by unilaterally implementing its last, best offer prior to the parties reaching ultimate impasse. Twinsburg City Sch. Dist. Bd. v. State Empl. Rels. Bd., 876 N.E.2d 580, 584 (Ohio App. 9th Dis. 2007)

To be at ultimate impasse, SERB has determined that there must be "no realistic possibility that continuation of discussion at that time would have been fruitful." American Federation of Television & Radio Artists v. NLRB, 395 F.2d 622, 628 (DC 1968)

Ultimate impasse cannot occur if one party has breached its duty to bargain in good faith. Vandalia-Butler City School Dist. Bd. of Educ. V. SERB, LEXIS 3866, 10 (Ohio App. 2nd Dis. 1991)

The fact that an employer has offered a package which costs equal to the maximum they are willing to offer does not alleviate its duty to negotiate in good faith. Twinsburg City Sch. Dist. Bd. v. State Empl. Rels. Bd., 876 N.E.2d 580, 586 (Ohio App. 9th Dis. 2007)

7. Direct Dealing

“By contacting the bargaining unit employees directly concerning its bargaining proposal and by suggesting that the employees speak directly to the Board if they had any questions,” The Vandalia-Butler City School District violated “the employees’ basic rights to representation and collective bargaining.” Vandalia-Butler City School Dist. Bd. of Educ. V. SERB, LEXIS 3866, 8 (Ohio App. 2nd Dis. 1991)

8. Surface Bargaining

An employer may act in bad faith and violate this provision (R.C. 4117.11(A)(5)) if they engage in “surface bargaining.” “Surface bargaining” may be defined as “simply going through the motions without any meaningful effort to reach an agreement”. Twinsburg City Sch. Dist. Bd. v. State Empl. Rels. Bd., 876 N.E.2d 580, 584 (Ohio App. 9th Dis. 2007)

The N.L.R.B. defines “surface bargaining” as when an employer finds nothing to agree to in a contract submitted to him, does not meet any of the unions minor requests, or fails to make any serious proposals that meet the union at least part way. N.L.R.B. v. Reed & Prince Mfg. Co., 205 F.2d 131, 134 (1st Cir. 1953)

9. Change of practice or policy during negotiations

The Employer committed an unfair labor practice by changing a longstanding holiday policy in retaliation for an employee bargaining proposal concerning holidays; Hamilton County Sheriff v. State Empl. Rels. Bd., 134 Ohio App. 3d 654, 731 N.E. 2d 1196, 1999 Ohio App. LEXIS 3959 (1999).

G. RC 4117.11(A)(6) Pattern or practice of refusal to process grievances

(6) Establish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances

A public employer's practice of repeated failures to timely process grievances and requests for arbitration of grievances concerning hiring and promotions is a violation of R.C. 4117.11(A)(1) and 4117.11(A)(6) despite the fact that the employer is seeking a judicial determination as to the arbitrability of the matters. The employer does not have to arbitrate nonarbitrable issues and may always raise the issue of arbitrability before action the employer refused to handle this grievance. SERB v Northeast Ohio Regional Sewer Dist., SERB 88-018 (11-3-88).

H. RC 4117.11(A)(7) Lockouts

(7) Lock out or otherwise prevent employees from performing their regularly assigned duties where an object thereof is to bring pressure on the employees or an employee organization to compromise or capitulate to the employer's terms regarding a labor relations dispute

I. RC 4117.11(A)(8) Causing the Union to violate the act

(8) Cause or attempt to cause an employee organization, its agents, or representatives to violate division (B) of this section.

SERB v. Hamilton County Sheriff, 23 OPER 249 (Employer committed ULP by refusing to allow employee's chosen union representative to attend grievance meeting; employee was told he had to postpone the meeting to obtain another representative or go forward without representation).

IV. UNION UNFAIR LABOR PRACTICES:

Under 4117.11 of the Ohio Revised Code, it is an unfair labor practice for *(B) an employee organization, its agents, or representatives, or public employees to:*

A. RC 4117.11(B)(1) Coercion or Restraint Regarding Employee Rights

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances.

An employee organization commits an unfair labor practice in violation of R.C. 4117.11(B)(1) in one of two situations:

- if it restrains or coerces employees in the exercise of the rights guaranteed in O.R.C. Chapter 4117, or

- (2) if it restrains or coerces the employer in the selection of its representative for the purpose of collective bargaining or the adjustment of grievances.
- Springfield Local School District Board of Education, 13 OPER (LRP) P1369 (OPER (LRP) 1996).

Note: In the absence of facts demonstrating undue pressure or threats to coerce or restrain the Employer in the selection of its representative, and with a record specifically demonstrating that there were no threats, SERB cannot find restraint or coercion, which is key to an O.R.C. 4117.11(B)(1) violation.

B. RC 4117.11(B)(2) Causing the Employer to Commit an Unfair Labor Practice

(2) Cause or attempt to cause an employer to violate division (A) of this section.

Ohio Department of Highway Safety (Bureau of Motor Vehicles), 11 OPER (LRP) P1046 (OPER (LRP) 1993)

- Issue: whether Union violated Ohio Revised Code 4117.11(B)(2) by causing or attempting to cause BMV to violate Ohio Revised Code 4117.11(A)(1).
- Complainant claims that Union violated 4117.11(B)(2) when it entered into the "secret agreement" with BMV to support one employee over another for the Researcher 2 position. According to Complainant, this agreement caused BMV to restrain the employee in her pursuit to have her grievance properly adjusted. Apart from the fact that it is difficult to see how BMV could have restrained this employee (since the grievance process was within her control), there is, as stated many times above, no credible evidence of any agreement between BMV and Union. Thus, again, this Hearing Officer submits that Complainant has not established a prima facie case against Union with respect to this alleged violation.

C. RC 4117.11(B)(3) Refusal to Bargain

(3) Refuse to bargain collectively with a public employer if the employee organization is recognized as the exclusive representative or certified as the exclusive representative of public employees in a bargaining unit.

D. RC 4117.11(B)(4) Boycotts or picketing related to jurisdictional work disputes

(4) Call, institute, maintain, or conduct a boycott against any public employer, or picket any place of business of a public employer, on account of any jurisdictional work dispute.

- The City of Delaware (Charging Party) filed an unfair labor practice charge against Ohio Council 8, American Federation of State, County and Municipal Employees, Local 3238, AFL-CIO (Charged Party). The charge alleges the Charged Party violated Ohio Revised Code §4117.11(B)(4), (5), and (8) by calling, instituting, and maintaining a boycott or unlawful strike, and by refusing to report to duty. The investigation revealed no probable cause existed to believe the Charged Party violated Ohio Revised Code § 4117.11. Information gathered during the

investigation does not reveal the Charged Party induced its members to participate in an unlawful strike, boycott, or work stoppage. Accordingly, the charge is dismissed with prejudice. Delaware, City of v. AFSCME, Local 3238, 20 OPER 129 (OPER (LRP) 2003).

- Board of education's charge, alleging that union unlawfully instigated a secondary boycott by encouraging student walkout and by encouraging members of general public to cease doing business with member of school board, was dismissed where there was no probable cause to believe that union violated Code. Clay Local Board Of Education, 7 OPER (LRP) P7209 (OPER (LRP) 1990).

E. RC 4117.11(B)(5) Strikes and boycotts against neutral 3rd parties, coerced recognition

(5) Induce or encourage any individual employed by any person to engage in a strike in violation of Chapter 4117. of the Revised Code or refusal to handle goods or perform services; or threaten, coerce, or restrain any person where an object thereof is to force or require any public employee to cease dealing or doing business with any other person, or force or require a public employer to recognize for representation purposes an employee organization not certified by the state employment relations board.

F. RC 4117.11(B)(6) Failure to fairly represent employees

(6) Fail to fairly represent all public employees in a bargaining unit

The Ohio Supreme Court upheld a court of appeals finding that SERB did not abuse its discretion when dismissing a former employee's unfair labor practice charge against his former employer and union for not proceeding to arbitration with his grievance. State ex re. Stewart v. State Empl. Relations Bd., (2006) 108 Ohio St. 3d 203. The collective bargaining agreement between the union and employer provides that a grievance may only proceed to arbitration upon the Union's finding of merit and its issuance of a referral to arbitration. Thus, an employee lacks any independent right to compel the Union and Employer to arbitrate.

G. RC 4117.11(B)(7) Residential or business picketing

(7) Induce or encourage any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer.

- The Ohio Court of Appeals for the 11th District held that Ohio Revised Code 4117.11(B)(7)—which states that is an unfair labor practice to induce or encourage picketing at a public official's residence or place of private employment during a labor relations dispute—is an unconstitutional restriction on speech. The State Employment Relations Board found the union committed an unfair labor practice when it induced

members to picket at board members' residences and places of private employment during a strike. The union appealed, arguing R.C. 4117.11(B)(7) is an unconstitutional content-based restriction on speech. The court agreed, finding that a violation of the statute "depends on the content of the message on the picket sign." Furthermore, the state did not demonstrate the statute was necessary to serve a compelling state interest and was narrowly tailored to achieve that interest. Portage County Educators Assoc. for Developmental Disabilities-Unit B, OEA/NEA v. State Employment Relations Board, 2020-Ohio-7004, 2020 WL 7863314 (Ct. App. 11th Dist. Portage County, Dec. 31, 2020)

- Note: On April 28, 2021, the Ohio Supreme Court certified a conflict between the holding in this case and the decision of the Seventh Appellate District in Harrison Hills Teachers Assn. v. State Employment Relations Board (2016-Ohio-4661). (Ohio Supreme Court case nos. 2021-0191 and 2021-0190 consolidated.) Oral argument scheduled for Wednesday, **February 9, 2022**.

H. RC 4117.11(B)(8) Picketing or striking without notice

(8) Engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by the written agreement of both.

V. THE PATH TOWARD STRIKE

- A. Definition of "Strike": Ohio Revised Code 4117.01(H): "Strike" means continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Strike" does not include a stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment that are abnormal to the place of employment.
- B. Definition of "Unauthorized Strike": Ohio Revised Code 4117.01(I): "Unauthorized strike" includes, but is not limited to, concerted action during the term or extended term of a collective bargaining agreement or during the pendency of the settlement procedures set forth in section [4117.14](#) of the Revised Code in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Unauthorized strike" includes any such action, absence, stoppage, slowdown, or abstinence when done partially or intermittently, whether during or after the expiration of the term or extended term of a collective bargaining agreement or during or after the pendency of the settlement procedures set forth in section [4117.14](#) of the Revised Code.

C. When Can a Strike Occur?

Contract must be expired. Ohio Revised Code Section 4117.14(B)(3): “The parties shall continue in full force and effect all the terms and conditions of any existing collective bargaining agreement, without resort to strike or lock-out, for a period of sixty days after the party gives notice or until the expiration date of the collective bargaining agreement, whichever occurs later, or for a period of ninety days where applicable.”

Mutually agreed settlement dispute procedures or statutory procedure have been exhausted. See Ohio Revised Code Sections 4117.14 and 4117.15.

A Proper and Timely Strike Notice is Filed and Provided. Ohio Administrative Code Section 4117-13-01(A) “A notice of intent to strike must be filed with the board and received by the employer no later than ten days prior to the anticipated strike date.” The notice must be in writing and meet specific requirements.

D. When Can a Strike Not Occur?

1. **When written notice has not been timely provided.** An employee organization, representative or public employee may not “[e]ngage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by the written agreement of both.” Ohio Administrative Code Section

2. **By a Court (temporarily) if there is a “clear and present danger to the health or safety” of the public.** Ohio Revised Code Section 4117.16(A): “Whenever the public employer believes that a lawful strike creates clear and present danger to the health or safety of the public, the public employer may petition the court of common pleas having jurisdiction over the parties to issue a temporary restraining order enjoining the strike. If the court finds probable cause to believe that the strike may be a clear and present danger to the public health or safety, it has jurisdiction to issue a temporary restraining order, not to exceed seventy-two hours, enjoining the strike.”

3. **By SERB if there is a clear and present danger to the health or safety of the public or if the strike is unauthorized.** Ohio Revised Section 4117.16(A) and 4117.23: “In the case of a strike that is not authorized in accordance with this chapter, the public employer may notify the state employment relations board of the strike and request the board to determine whether the strike is authorized under Chapter 4117. of the Revised Code. The board shall make its decision within seventy-two hours of receiving the request from the public employer.”

E. **What can you do in response to an “unauthorized strike”?** See Ohio Revised Code 4117.23(B). An employer may remove or suspend the employees after proper notice and

continued unauthorized strike. The employee's wages are frozen for one year if employment is continued. The employer shall deduct two days' wages for each day the employee remains on strike after notice is provided. These penalties are in addition to any discipline afforded under Board policy or collective bargaining agreement provision.

F. What Happens When Employees Choose to Strike?

1. **Employer must provide notice to employees about ramifications at least one day prior to strike.** Ohio Administrative Code Section 4417-13-04: "Upon receipt of a determination by the board that a strike is not authorized under Chapter 4117. of the Revised Code, the employer shall take reasonable steps to notify all striking employees of such determination at least one day prior to the imposition of the penalties provided in section [4117.23](#) of the Revised Code."
2. **Striking employees lose pay and other forms of compensation.** Ohio Revised Code Section 4117.15(C): "No public employee is entitled to pay or compensation from the public employer for the period engaged in any strike."

G. Important considerations before heading down the strike path

1. Is this your Last, Best and Final Offer? Are you SURE?
2. Board support
3. Community support
4. Consider student involvement
5. Safety
6. Ability to continue operations
7. Expense
8. Future

H. Who's on your strike team?

- Board
- Administrators
- Vendors
- Legal Counsel

- Communications Consultant
- Law Enforcement
- Safety Consultant
- Replacement workers/vendors
- Neighboring district administration
- ESC

I. What is your strike plan?

- What to expect from the union
- Strategic Planning Team
- Strike headquarters and communications plan
- Board action prior to strike
- Security and law enforcement
- Substitutes
- Other unions
- Communications prior to strike (to employees, other unions, administrators, families, students, community, other stakeholders and supporters)
- Communications during the strike
- Communications after the strike
- Roles and responsibilities of the Superintendent, Treasurer, Board Members, other Administrators
- Extracurricular activities
- COBRA and benefits
- Legal Actions (ULPs, Unauthorized Strike determinations, injunctions)