The Protect Ohio Protectors coalition includes the Fraternal Order of Police of Ohio, Ohio Association of Professional Firefighters, Ohio Patrolmen's Benevolent Association, Ohio State Troopers Association, Northern Ohio Fire Fighters, Cleveland Police Patrolmen's Association, Toledo Police Patrolman's Association and the Toledo Police Command Officer's Association.

Protect Ohio Protectors Coalition - Position on Senate Bill 5

This 300 page bill is very complicated and proposes to make numerous, substantial and interrelated changes in the law. It is being rushed through without proper consideration of the reasons for these proposed changes. Because of the complexity and ambiguity of the bill, this attempt to highlight problems can not include parts of many of the proposed objectionable changes. It is the position of the Protect Ohio Protectors Coalition that none of these changes should be made to a procedure that currently works very well, does not impose burdens upon the taxpayers and accomplished its purpose of enabling public employees to address their complaints without disrupting the operation of public employers. It is not our intent to represent that this discussion is exhaustive. In fact it is quite possible that there are other pieces of the legislation that need to be addressed since many sections of the proposal are obscure and less than understandable.

1. The bill deletes the inclusion of safety force working supervisors in the definition of employees eligible to be members of a bargaining unit for no reason. The potential withdrawal of bargaining rights for thousands of employees currently enjoying collective bargaining rights cannot be justified from the experience of the last 27 years of operation of Chapter 4117.

2. The elimination of the explanatory language which more definitely defines police and fire supervisors will lead to numerous disputes and litigation. Moreover, the removal, in this section, of the language specifically subjecting these disputes to the SERB Board will cause additional confusion and uncertainty. Removing the proscription against appealing decisions concerning the appropriateness of bargaining unit composition will add months or years to the process.

3. The express inclusion of "fire supervisory officers" in the definition section does not change the meaning of "supervisors" currently contained in the collective bargaining act, but it will cause undue confusion in interpreting this section moving forward. The proposed language separating the bargaining units in fire departments will lead to significant additional time, money and effort poured into altering bargaining units that have existed, without issue, for many years.

4. The bill allows an employer to refuse to talk to the union about subjects reserved to the exclusive purview of management and deletes the requirement that the continuation of a current provision of a collective bargaining agreement is a "mandatory subject" of collective bargaining. Those provisions put the safety of all employees at risk. For example, the inclusion in agreements and bargaining over subjects such as body armor, safety procedures, vehicles, radio equipment, weapons and weapons training could be prohibited. The bill effectively eliminates the ability to bargain over shift assignments

and work locations (for a state wide employer, like the Ohio Highway Patrol or the Ohio Department of Natural Resources). These provisions also unfairly operate to eliminate many contractual issues which were achieved as a *quid pro quo* for other compromises made by labor during the prior negotiation of former contracts.

5. Changing the time frame for the posting of filing of objections to certification from twenty-one to thirty days simply further extends a process that takes way too long already. The elimination of the obligation of SERB to certify the employee organization after the period for objections has passed, once again, will needlessly delay the process, but also, will make it totally uncertain when and how the certification will occur.

6. The bill restricts agreements that cover the provision of health care by capping the cost of the employer's share of those costs at 85% of the total cost of the benefit. Prohibiting bargaining on the issue of health care benefits will immediately reduce the compensation for thousands of public employees. This badly conceived prohibition could jeopardize the enormous efforts that have been made state wide to save the taxpayers' money by working out cost saving terms in health care plans. Additionally it robs employees of previously bargained for monies that resulted from exchanging lower premium payments for lesser wage increases and it has a substantive disparate impact on lower wage earners.

7. The bill requires that length of service cannot be the only factor in determining the order of layoffs, adding efficiency, appointment type, and "other similar factors" as further considerations. This exposes safety force employees to retaliation for upsetting supervisors or their political employers when they are simply trying to do their jobs in accordance with the law. This provision will result in quotas becoming much more prevalent in law enforcement. The language will spawn, at the very least, a rash of age, race and gender based discrimination lawsuits. This provision is an arbitrary attack on age and seniority.

8. The wholesale changes to the current language defining management rights are not only vague and overbroad, but, it is so overreaching and fundamentally unfair that it could completely leave a bargaining unit with no rights, whatsoever. This section will likely remove the employee's ability to grieve over many fundamental workplace rights, not the least of which is just cause for discipline. Finally, the implied removal of the ability to bargain collectively over mid-term changes will permit the employer to change the elements of the collective bargaining agreement, during its term, without any substantive input from the employees, whatsoever.

9. The proposed changes to the language to eliminate grievances based on past practice will lead employers to unilaterally change terms and conditions of employment without seeking the input from experienced and knowledgeable front line personnel. The failure to have the employees on board with the employer's changes will lead to inconsistencies, instability in the workplace, disparate impact in the treatment of employees and a decrease in morale.

10. The inclusion of FLSA overtime rate restrictions will result in an immediate and unwarranted decrease in employee compensation as of the date of application to the bargaining unit. Attempting to define overtime rates pursuant to the FLSA will cause confusion and litigation.

11. Arbitrary changes in time frames imposed to bring a conclusion to the collective bargaining process makes it cumbersome and adds further delay to the statutory procedures for reaching collective bargaining agreements.

12. The added restriction concerning the evaluation of the employer's ability to pay to the "time period surrounding the negotiations" is extremely vague and has no logical basis in financial analysis. Moreover, it will tend to over-emphasize one-time expenditures by employers which could be specifically timed to impact negotiations. It is a snapshot approach which will not give a true picture of the employer's ability to pay or its actual overall financial well being. Finally, removing any potential increases in the employer's revenue from consideration is completely unfair, as the tax-paying citizens' willingness to fund these essential services is absolutely relevant to the analysis.

13. The bill allows the unconstitutional termination of collective bargaining agreements by allowing a public employer in fiscal emergency to terminate, modify and renegotiate such an agreement and cannot help but result in time consuming and expensive litigation.

14. The imposition of the ability of the Governor to intervene in the decision to find political subdivisions of the State of Ohio in fiscal watch or fiscal emergency unconstitutionally increases the Governor's power and allows him to interject the state executive branch into the operation of local governments.

15. The proposal in the bill to change the terms and conditions of the employees' participation in the deferred retirement option plan ("DROP") punishes all employees enrolled in DROP and is discriminatory toward elder and senior employees. As a general matter it should be addressed, if at all, in legislation regulating the relevant pension system.

16. The bill reduces vacation accrual and personal leave accrual without any evidence to support the reduction. Proponent testimony during the senate hearings did not address vacation and personal leave accrual rates. Further, the caps imposed are totally arbitrary and, once again, designed, in part, to discriminate against senior employees.

17. The arbitrary limit on sick leave severance benefits is subject to constitutional challenge and once again, designed, in part, to discriminate against senior employees.

18. The bill allows a public employer to "freely communicate" views or opinions to employees, as long as views don't "contain a threat or promise of benefit", freeing employers from the possibility that such a communication will be considered an unfair labor practice.

19. The bill unconstitutionally prohibits public employees from communicating with members of legislative bodies even though legislative bodies have the last word on the terms of agreements to be imposed in accordance with the bill. This language will result in the creation of extremely poor public policy by prohibiting public employees from communicating with their elected and/or appointed officials.

20. The process for responding to purported illegal strikes, including the stated presumptions and the method for gathering evidence seems to have serious potential problems with respect to due process and may also contain Fifth Amendment considerations. This applies also to penalties proposed for illegal strikes.

21. The language of the bill requiring the investigation of an unfair labor practice charge, the requirement that the charge be based on probable cause and the requirement that the Board issue a complaint is eliminated. These changes will not lead to a more orderly and efficient process. The current system provides a logical method for the processing of an unfair labor practice charge. It permits the parties to access information that is helpful in preparing for a hearing and in evaluating the merits of a charge. The elimination of these aspects of the process will lead to inefficiency and waste. Further, the proposed change to eliminate the finalization of the proposed decision in the circumstance where no exceptions are filed within twenty days will cause additional cost. Also, the additional penalties against unions contained in the bill are unconstitutional under the First Amendment.

22. The bill eliminates the ability of unions to negotiate pension pick-up language leading to the immediate and unwarranted decrease in compensation previously gained through the give and take of prior contract negotiations. There will be no savings to taxpayers from the implementation of this provision.

23. The addition of the language removing privatization of bargaining unit work from subjects that are permitted to be bargained jeopardizes the public's health and safety by permitting private entities to provide services with untrained and/or unskilled personnel. Moreover, it impairs previously negotiated collective bargaining arrangements and prohibits negotiation of any severance payment related to the loss of work.

24. The addition of the language removing minimum staffing issues from subjects that are permitted to be bargained will seriously jeopardize the health, welfare and safety of our members.

25. The bill eliminates conciliation procedures for those employees not allowed to strike ensuring that there will never be a resolution of issues in contentious labor management disputes. Public safety is our paramount concern and these provisions directly interfere with that goal. These provisions will allow those issues to fester without resolution. The process of having the legislative body to hold a hearing to determine which last best offer it will choose provides no incentive for an employer to bargain in good faith. This proposed procedure will only serve to inflame passions in the work place and make the conduct of the public's business unnecessarily difficult. The proposed format renders fact-finding meaningless and puts the Employer in such a position of insurmountable advantage that it has the practical effect of eliminating collective bargaining.

26. The concept of merit pay, which appears in the proposed amended law in numerous places, is simply not translatable to safety forces. Merit pay systems are subject to bias and cronyism. In addition, merit pay systems could lead to unintended consequences, such as possibly creating a situation where undesirable incentives influence employees in the exercise of discretionary alternatives while performing essential functions of the job. Merit pay systems do not work for safety forces and are not adaptable from the private sector, as there are virtually no comparable employees in the private sector. When considered along with the plethora of unwarranted constrictions placed on economic benefits and wage-related items elsewhere in the proposed amendments to existing law, the inclusion of merit pay is patently illogical.

27. The bill changes procedures that have worked well for 27 years without any evidence that those procedures have failed to serve the public interest. None of the changes proposed are supported by any actual evidence. All of the proponent testimony was based on unsupported anecdote, given by witnesses that had personal involvement in the failure of employers to properly support the losing positions that they came to the legislature to complain about. A proper exploration of these unsupported anecdotes, given an appropriate amount of time, would have exposed these claims as baseless.

28. The bill is almost 300 pages and it is very complex. Many of the proposals are poorly drafted. The adoption of this legislation will only ensure that many lawyers are permanently employed in numerous law suits sorting out the morass that is SB5. Clearly one of the bad effects of this legislation is that it will cost taxpayers a lot of money to pay for expensive and unnecessary litigation. Contrary to one of the proponent's announced purposes in introducing the bill many of the provisions of this bill straightjacket the employer and defeats the goal of giving employers more flexibility in managing their operations.