

616 Penton Media Building  
1300 East Ninth Street  
Cleveland, Ohio 44114-1503  
(216) 566-1600  
Fax (216) 566-1814  
Writer's Direct Dial:  
216-774-3008

Melvin S. Schwarzwald  
Eben O. McNair, IV  
David M. Fusco  
Timothy Gallagher  
Daniel S. White  
James G. Porcaro  
Jessica S. Monroe

Writer's E-mail Address:

[emcnair@smcnlaw.com](mailto:emcnair@smcnlaw.com)

LAW OFFICES OF

Schwarzwald McNair & Fusco LLP

April 18, 2015

Dear Speaker Rosenberger and Republican Members of the House Finance Committee — Representatives Smith, Schuring, Anielski, Burkley, Cupp, Derickson, Dovilla, Duffey, Green, Grossman, Hall, Kunze, Maag, McClain, Perales, Reineke, Romanchuk, Scherer, Sears, Sprague, and Thompson:

We write in support of the removal of the provisions in Sub. H.B. No. 64, pending in the House Finance Committee, which would amend Ohio Revised Code § 4117.01 and remove virtually all full-time faculty at public institutions of higher education from the scope of the Ohio Public Employees' Collective Bargaining Act.

Our law firm has the privilege to represent four chapters of the American Association of University Professors ("AAUP") which represent faculty at public Ohio institutions of higher education.<sup>1</sup> While the content of this letter is informed by that representation, we write on behalf of ourselves and do not speak for our clients herein.

We believe the proposed amendments to § 4117.01 are inappropriate because our experience in working with faculty labor organizations and university administrations has demonstrated that public institutions of higher education work best when there is true shared governance. If power is too consolidated in university or college management, true shared governance is highly unlikely – it is human nature that unchecked power leads to abusive results.

The Ohio Supreme Court observed in *City of Rocky River v. SERB* that "the wisdom of the General Assembly in promulgating the [Ohio Public Employees' Collective Bargaining] Act becomes even more obvious" when one considers the "turbulent days" preceding the Act where public employees were "prohibited from striking, but frustrations stemming from employee powerlessness frequently erupted into illegal strikes." 43 Ohio St. 3d 1, 19-20 (1989). Collective bargaining by faculty allows for true shared governance and breeds cooperation between faculty and university and college management that allows these institutions to better serve their communities.

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<sup>1</sup> These include the chapters at The University of Akron, Bowling Green State University, Cuyahoga Community College, and North Central State College.

This valuable shared governance has occurred at the four Ohio AAUP chapters we represent, and we have seen instances of true collaboration over the years thanks to the structure provided by Chapter 4117. In fact, in the last ten years, the four AAUP chapters we represent have filed many grievances, and all but one was amicably resolved without arbitration. In the one case that did proceed to arbitration, the faculty labor organization prevailed. The system of collective bargaining really works for resolving disputes and improving the morale of the workforce. This cooperation is put in jeopardy by Sub. H.B. No. 64 for no good reason.

Moreover, the proposed revisions to § 4117.01 pertaining to faculty are inappropriate because the reality is that faculty currently included as employees under § 4117.01 simply do not exercise or possess any kind of managerial or supervisory authority. Faculty members *make recommendations* about curriculum and academic policy and also *make recommendations* about the promotion and retention of their colleagues – such recommendations are a far cry from making managerial decisions. Faculty recommendations about hiring, promotion, and retention are merely one of several recommendations given to presidents and boards of trustees, who are the ones ultimately making the decisions. Recommendations are also made by chairs, deans, and provosts before the president and the board decide. Bargaining unit faculty certainly do not have any independent ability to hire and fire.

In fact, most, if not all, collective bargaining agreements between public universities or colleges and Ohio faculty labor organizations expressly provide that the institution retains and reserves all rights and powers vested in the institution and all management rights reserved to the Board of Trustees under § 4117.08(C).

We would also like to remind Committee members of the state of public labor relations prior to the effective date of the Ohio Public Employees' Collective Bargaining Act in 1984. In 1980, there were 60 public sector strikes, involving 13,600 workers and costing the state 119,600 lost workdays. *Analysis of Work Stoppages, 1980*, U.S. Dept. of Labor Bureau of Labor Statistics, Bulletin 2120 (March 1982). In contrast, there were only four public sector strikes in Ohio from 2010 through 2014. *State Employment Relations Board 2014 Annual Report*.

Removing the rights of faculty to collectively bargain also rejects democratic principles. At universities and colleges with a recognized labor organization, most units voted by majority to be represented by a labor organization under Chapter 4117. Faculty remain free to vote to no longer be represented and faculty at several public institutions have refrained from seeking representation. We believe this choice and the ability to change status at the local level allows the most flexibility for productive relations between faculty and universities or colleges.

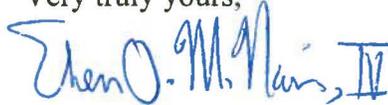
In addition, we note that almost identical language was included in Am. Sub. Senate Bill 5, which was overwhelmingly rejected by the voters in the 2011 general election. To resurrect portions of Senate Bill 5 after the voters soundly rejected it is to act in a manner contrary to what

voters voiced just a few years ago. Such conduct is also contrary to the most basic democratic principles. Referendums like the one that occurred with Senate Bill 5 are one of the most essential safeguards to representative government and should not be nullified.

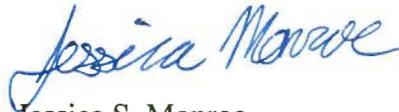
Finally, due to the vast variety of issues currently addressed in Sub. H.B. 64, we have a concern that the enactment of this bill would be unconstitutional under Article II, Section 15(D) of the Ohio Constitution. There is no discernable common purpose or relationship between this provision and the many other issues addressed in this appropriations bill.

For all of the above reasons, we strongly urge the Finance Committee to remove the proposed amendments to § 4117.01 and preserve the collective bargaining rights of Ohio's full-time faculty at public institutions of higher education.

Very truly yours,



Eben O. McNair, IV



Jessica S. Monroe