

Testimony of Rudy Fichtenbaum, Ph.D.
Ohio Conference of the American Association of University Professors
Before the House, Commerce and Labor Committee
Representative Uecker, Chairman
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Good morning Chairman Uecker, Vice Chair Young, Ranking Member Yuko and distinguished Committee members. Thank you for giving me the opportunity to testify before your Committee on this important matter. The purpose of my testimony this morning is to speak in opposition to Senate Bill 5.

Before I offer my testimony, I want to share with you some information about my background. I hold the economics Ph.D. from the University of Missouri and am a Professor of Economics at Wright State University. I am a labor economist and have published more than 35 articles in scholarly journals including several on the impact of unions on labor markets. Since 1998 I have been the chief negotiator for the Wright State Chapter of the American Association of University Professors, and I am also a past President and current member of the Board of Trustees of the Ohio Conference of the AAUP.

For those of you unfamiliar with AAUP, our organization was founded in 1915 by Arthur Lovejoy -- a Professor of Philosophy at Johns Hopkins University -- and John Dewey -- our great American philosopher, psychologist and educational reformer. The incident that prompted Lovejoy and Dewey to found AAUP was the firing of a labor economist at Stanford because a member of the Board of Trustees did not like his views on immigrant labor and railroad monopolies. Since that time, AAUP has worked to protect academic freedom and to provide fair procedures for resolving grievances, to promote the economic well-being of faculty and other academic professionals, and to advance the interests of higher education.

In Ohio, AAUP chapters represent faculty as a collective bargaining agent at the University of Akron, Bowling Green State University, Central State University, the University of Cincinnati, Cleveland State University, Kent State University, the University of Toledo, Wright State University, Cincinnati State Technical and Community College, Cuyahoga Community College and North Central State College.

In its amended form, Senate Bill 5 allows employees to bargain over wages, but employers would either be prohibited or not required to bargain over health benefits, discipline, discharge, promotions, work rules, layoffs, recall, the impact of technology on working conditions, employee share of insurance costs, work rules, overtime, staffing levels, equipment and any existing provision of a contract covering the aforementioned. To call this bargaining is like negotiating a price for a new car and then letting the dealer "adjust the price," while you are driving home.

Although Senate Bill 5 purports to preserve collective bargaining for most state and local public employees, the amended version makes a mockery of true collective bargaining. It eliminates the right of public employees to strike. It eliminates binding arbitration, by a neutral third party. It prohibits an employer and a union from developing an alternative dispute resolution procedure. In their place, it creates a sham dispute resolution procedure, allowing employers to impose their last best offer. Calling this a dispute resolution procedure is like claiming that a bank robber, with a loaded gun, is negotiating a withdrawal from the bank.

Thus, in its amended form, while SB 5 preserves the nominal right to bargain for most public employees, in reality it would force most public employees to engage in collective *begging*.

Moreover, the amended version of SB 5 singles out university and college faculty for "special treatment." The Senate passed amended version of Substitute Senate Bill 5 states -- and I quote -- "any faculty who, individually or through a faculty senate, or like organization, participate in the governance of the institution, are involved in personnel decisions, selection or review of administrators, planning and use of physical resources, budget preparation, and determination of educational policies related to admissions, curriculum, subject matter, and methods of instruction and research, are management level employees." Thus, while other employees at public institutions of higher education would nominally have the right to engage in collective bargaining, faculty by virtue of their having been declared to be "managers," would lose our right to bargain. This provision of SB 5 would affect faculty at institutions represented by AAUP, the Ohio Education Association and the Ohio Federation of Teachers.

I want to be absolutely clear that the work that we do as professionals differs in two fundamental ways from the work of university administrators and members of boards of trustees. First, we are professionals who typically have spent five to six years beyond the undergraduate level earning a Ph.D. or other terminal degree and then in many cases have two to four years of additional training as post-doctoral researchers; the work we do – and this is a crucial point – cannot be done by administrators or members of boards of trustees. Second, we make recommendations about curricular matters, and about the hiring and retention of faculty, based on our knowledge and professional expertise; these are not decisions; they are *recommendations*. Perhaps with one or two exceptions in bargaining units that pre-date the passage of ORC 4117, members of our bargaining units have no supervisory functions, other than supervising our students and research staff in our labs.

The language I quoted a moment ago, based on the 1980 NLRB v. Yeshiva decision of the United States Supreme Court, is an attempt to muzzle faculty taking away our rights. In every institution of higher education where faculty have chosen to engage in collective bargaining, we have done so by a majority vote of the faculty. That is, democratic processes led to collective bargaining for university faculty. Further, the *reasons* that faculty voted for collective bargaining were, in many cases, far from entirely economic. Indeed, the *real* managers of our universities and colleges have increasingly treated faculty in an arbitrary and capricious manner – e.g., giving raises and promotions based on the old boy network, or who is friends with who – anything *but* real merit.

The faculty are the heart and soul of our universities and colleges. Can you name one great institution of higher education that does not have a great faculty? Does any

parent decide to send their child to a college or university because they have a high ratio of vice-presidents to students, an award winning registrar, or a great director of parking services?

In almost all cases, we have chosen collective bargaining to protect our autonomy as professionals. And, we are professionals who are dedicated to maintaining the **academic integrity** of our institutions, so that they are successful in training the workers and citizens of the future and in generating many discoveries that drive economic growth. As Justice Brennan noted in his dissent on the Yeshiva case, "Although the administration may look to the faculty for advice on matters of professional and academic concern, the faculty offers its recommendations in order to serve its own independent interest in creating the most effective environment for learning, teaching, and scholarship. And while the administration may attempt to defer to the faculty's competence whenever possible, it must and does apply its own distinct perspective to those recommendations, a perspective that is based on fiscal ... and other managerial policies which the faculty has no part in developing."

Let me amplify a remark I made a moment ago. Before we had collective bargaining, "merit pay" was in many cases given not to those who were the best teachers or the best scholars, but to those who were perceived by managers (department chairs and deans) as "team players." Promotion and tenure recommendations were not made using any objectively defined criteria, but were made by an "old boys network", which discriminated again women and minority faculty members and punished anyone who dared to question the judgments of senior faculty or administrators, and this behavior was sanctioned by the people at the top who manage our universities and colleges. Before we had collective bargaining we had no grievance procedures. Rules agreed to by managers, even those officially recorded in faculty handbooks or charters, were routinely violated and unilaterally changed, and faculty had no recourse.

At my university we had a young assistant professor of chemistry who, when she came to Wright State, found that her lab was contaminated with mercury. As a result of this contamination, she could not use her lab for nearly a year. When she came up for tenure she was turned down because, despite the fact that she was an excellent teacher, she had not produced enough research. Our union, through a mechanism set up in our collective bargaining agreement, was able to appeal her case and eventually get her a one-year extension of her probationary period. During this one-year period she produced enough additional of research to be tenured. Before we had a union, she would have been out of luck, and we would have lost another woman scientist. Most of our contracts have provisions to reward performance. In most cases, there are objective criteria that have been negotiated, and hence agreed to jointly by faculty and administrators, to determine who gets these "merit" raises.

When Bruce Johnson, President of the Inter-University Council, representing all of the Presidents of Ohio's public universities testified before the Senate Committee on Insurance, Commerce and Labor he said "collective bargaining places very little

value on efficiency and productivity." He also said, "If people knew about all of the processes that go on relative to Ohio's public sector collective-bargaining law, they would be offended by the time, energy and talent that is underutilized."

In reality, it is not collective bargaining at our institutions of higher education that produce inefficiencies and waste valuable resources. What Ohio's citizens and you, as our elected representatives, should be offended by is the misuse of taxpayer money by our university presidents who Mr. Johnson represents.

Would you be surprised to know that taking into account the number of faculty at each of our doctoral level public universities, our faculty earn an average of \$4,800 a year *less* than faculty at other doctoral public universities in the U.S.?

Would you be surprised to know that compensation of full-time faculty at Ohio's state universities accounts for only 11.1% of operating costs, as defined by SB 6? Would it surprise you that only 20.8% of all payments to employees at Ohio's public universities go to full-time faculty and that we account for just 18.4% of all full-time employees at Ohio's state universities? Would it surprise you that the average percentage of salary spent on benefits for full-time faculty at Ohio's universities is 29.4% and that according the Bureau of Labor Statistics, benefits, as a percent of salary for the average private sector worker in the East North Central census division in September of 2010, were 30.7%?

What is the cause of the inefficiencies and wasted resources that Mr. Johnson spoke about in his testimony that should offend taxpayers and you as our elected representatives? According to a report from the conservative Goldwater Institute, which describes itself as "an independent government watchdog supported by people who are committed to expanding free enterprise and liberty," -and I quote -- "...universities now have more administrative employees and spend more on administration to educate each student. In short, universities are suffering from "administrative bloat," expanding the resources devoted to administration significantly faster than spending on instruction, research and service." Indeed, the entire report does not mention unions or collective bargaining at all.

Using data from the *Delta Cost Study*, which is derived from the Integrated Post Secondary Data System (IPEDS), I have calculated that for all 2 and 4 year public institutions of higher education in Ohio that between 1987 and 2008, spending on instruction and academic support *increased 179%*. In contrast, spending for institutional support and student services (mostly administrative spending) *increased 270%* over the same period. If spending on institutional support and student services had grown at the same rate as spending on instruction and academic support the parents and students who pay tuition and the taxpayers could have saved \$302 million in 2008.

According to the *Chronicle for Higher Education*, compensation for the Presidents of just 10 of our 14 state universities and 2 community colleges was \$6.8 million in 2007-08, the latest year available. Spending for institutional support and student

services, two of the fastest growing areas of administrative spending at Ohio's 14 public universities, was \$945 million for FY 2010. A 10% cut in these administrative costs at Ohio's 14 state universities could save the taxpayers \$94.5 million, an amount equal to 6.1% of the state appropriation for Ohio's 14 state universities.

Another example of wasted resources is the money spent on subsidizing intercollegiate athletics. Only one institution in Ohio is self-supporting when it comes to inter-collegiate athletics, the Ohio State University. Together in FY 2010, student fees and institutional support amounted to a \$129.2 million subsidy for intercollegiate athletics, as reported in the annual financial statements of the state universities available on the Ohio auditor's website (excluding Central State and Shawnee State). To put this number in perspective it represents 8.5% of the state appropriation that goes to Ohio's public universities. If the primary mission of our universities is to educate students and conduct research to drive economic development, then can the taxpayers of Ohio afford to spend this sum of money for entertainment?

According to an article in the December 31, 2010 *Dayton Daily News*, Miami University spent \$272,000 for cellphones in 2009-10, Wright State paid \$209,000 and Sinclair Community College spent \$70,000. The same article reported that the Ohio State University could not even figure out how much they were spending on cellphones. I can assure you that this money being spent for cellphones is not going to faculty, administrative assistants or custodians. To negotiate its first contract, the University of Akron spent nearly \$250,000 to pay three attorneys to sit at the negotiating table and drag out negotiations for almost two years. At the University of Toledo between 2006 and 2009, the salaries of 14 top administrators increased 22.5%, not including \$1.5 million in bonuses, while the faculty received raises totaling about 10% over the same period. According to the *Toledo Blade* on September 22, 2009, some members of the Board of Trustees voiced support for the administration's need to pay high salaries and bonuses for the retention of administrators. It was also reported in *Ohio Academe* that the University of Toledo had reportedly spent millions of dollars maintaining an office in China and paying for travel (first class and business class) for administrators and members of the board of trustees along with their spouses.

Thus, it is administrative costs and other forms of wasteful spending - not associated with faculty, custodians or other workers who may be unionized - that explain shortfalls in "efficiency and productivity."

Will having an anti-union environment make us more successful as a state? The average per capita amount of research dollars flowing to universities in each state between 2000 and 2007 was \$78.36. In non-right-to-work states the average per capita amount was \$93.96 and in right-to-work states it was \$58.49. Creating an anti-union atmosphere in Ohio could end up costing us millions of dollars that we need to help do the research that will act as the engine for economic development in our state. If faculty are forced to work in conditions where they have lost their

professional autonomy and are utterly powerless when faced with arbitrary and capricious personnel decisions, they will leave Ohio and look for positions in other states that place a high value on creating a world class system of higher education.

Finally, I would like to quote from an email that David Hopkins, President of Wright State University sent to the entire campus community in an email dated March 7, 2011, "On a personal note, I was raised in a union family and, as president and provost, have found our union leadership to be of the highest quality. I appreciate all they have brought to us, and I believe we are a stronger institution because of their dedicated commitment to their membership."

I do not need to tell the committee that to create the high paying middle class jobs of the future, we need a world-class system of higher education. This in turn means attracting the best and brightest from around the world to come teach and undertake research at our universities and colleges in Ohio. Senator Jones acknowledged in her sponsor's testimony in the Senate that eliminating collective bargaining rights for public employees would have little if any effect on Ohio's *immediate* budget problems. I submit that curtailing collective bargaining rights for public employees will be outright harmful to Ohio *in the longer term* – by weakening our state's competitive position in having a well educated citizenry, a safe environment – I refer to police and firefighters and their unions – in which to raise families, and workplace conditions that engender satisfied employees who will stay with their public employer rather than leaving at the first opportunity. I urge you to vote against this bill and thereby allow all public employees, including faculty in higher education to continue having the right to bargain collectively.

I would be happy to answer any questions.