



Susannah Muskovitz

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March 3, 2011

David Quolke, President
Cleveland Teachers Union
American Federation of Teachers, Local 279
1228 Euclid Avenue, Suite 600
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RE: Senate Bill 5

Dear David:

I know your members have questions about when Senate Bill 5 will go into effect, if and when it is passed by the House and signed by the Governor. Your members also have questions about the effect of Senate Bill 5 on the existing CBA. I am in the process of analyzing the changes to SB5 and will be sending a comprehensive analysis to you shortly. However, in the interim, please let me answer the immediate questions about the effect of the bill.

Article 2 of the Ohio Constitution requires that 90 full days elapse before a law goes into effect in order to permit any possible referendum petition to be circulated and filed by the electorate. This makes the normal effective date of a law the 91st day after its filing with the Secretary of State. However, the Constitution also stipulates that laws providing for appropriations for the current expenses of state government, tax levies, and emergency laws necessary for the immediate preservation of the public peace, health, or safety go into immediate effect and are not subject to the referendum.

In the case of Senate Bill 5, the 90 day provision will apply after the bill is passed by the House and signed by the Governor.

If, during that 90 day period, enough signatures are collected to place a referendum on the ballot to repeal the law (which would be in November, 2011, assuming that the bill goes into effect prior to April 1, 2011), then the bill will not go into effect until after the vote (i.e. not until November, 2011) – unless of course, the referendum passes – in which case the bill will be repealed.

With respect to your current CBA, it is my opinion that it is protected by the Contract Clause in the U. S. Constitution (Article I, Section 10, Clause 1) which prohibits states from



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retroactively altering contracts. The duration clause in your CBA is from July 1, 2010 through June 30, 2013. There is specific reopener language in Article 31 of your contract that allows the CTU to reopen negotiations "for salaries only" upon the availability of new monies. There is also reopener language that allows the District to reopen negotiations if the Board of Education projects a deficit. In that case, the Board may only reopen negotiations with respect to Article 9, Section 2 (Professional Development/Longer Year), Article 10, Section 1 (Class Size and Organization – only as to the \$1/\$5 compensation and not class size), Article 29 (Employee Benefits), and Article 30 (Matters Relating to Wages and Benefits).

In your case, both the CTU and the District have exercised their reopener options.

It is my opinion that these reopeners do not negate the protection that your contract has under the Contract Clause in the U.S. Constitution and that any changes in wages, health care, etc., that are mandated by SB5 will not apply until after June 30, 2013. That being said, I also want to caution you that the Board may take a different position on this issue, and it is possible that it would have to be decided either by a court or an arbitrator.

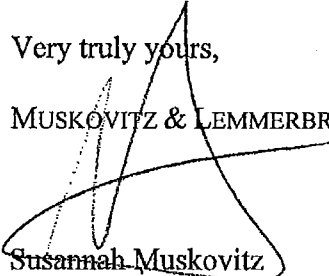
I understand that there is a great deal of anxiety among teachers and other public employees throughout the state – who want stability in their workplaces. My recommendation is that you tell your members not to make any rash decisions, such as retiring now, rather than at the end of the school year, because they will have at least 90 days from the effective date of the bill to make that type of critical decision and it is very likely that there will be sufficient signatures to have a referendum.

At the same time, it is imperative that your members continue their work in contacting their legislators, writing letters to local newspapers, speaking to their family, friends, and neighbors, and letting the voters of Ohio know that the loss of collective bargaining right will have a devastating effect on education in Ohio.

The fight cannot be won by Union leaders alone. The fight has to be won by the entire membership working together for all public employees.

Very truly yours,

MUSKOVITZ & LEMMERBROCK, LLC


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