




# Police Contract Negotiations Toolkit: Columbus

Frequently Asked Questions

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*The ACLU supports the rights of employees, both public and private, to organize unions and bargain collectively. Collective bargaining statutes provide critical and necessary protection for workers who exercise basic civil rights, in particular, the rights of speech, association, and petition. Efforts to strip workers of these protections have no place in our democracy. The purpose of this toolkit is to shed light on the collective bargaining process with the goal of enhancing transparency so we can collectively work to address police violence.*





# Columbus Police Collective Bargaining Agreement (CBA): FAQ

## What is collective bargaining?

Collective bargaining is the process by which an employer (including a public employer) and its employees, both through the use of representatives, negotiate the terms of a contract known as a collective bargaining agreement (CBA).

In Ohio, the collective bargaining process in the public sector requires employees and employers to negotiate in good faith at reasonable times and places. However, Ohio law specifies that this does not require either party to agree to a proposal or make concessions.

In Ohio, collective bargaining in the public sector is governed by O.R.C. § 4117.

## What does a collective bargaining agreement include?

The collective bargaining process determines wages, hours, terms and other conditions of employment.

O.R.C. § 4117.03(A)(4).

## How are unions involved?

A public employer is obligated to bargain collectively with the “exclusive representative” of the employees in the relevant bargaining unit and the “exclusive representative” is obligated to bargain collectively with the public employer. The term “exclusive representative” refers to the union which has been voluntarily recognized by the employer (typically upon presentation of evidence of majority support for the union), or certified by the State Employment Relations Board following an election, as the representative of the particular unit of employees.

O.R.C. § 4117.03(A)(4), O.R.C. § 4117.04(B), O.R.C. § 4117.05, O.R.C. § 4117.08.

## Are there subjects over which a public employer is NOT obligated to bargain?

Yes. Although, just because they are not obligated to bargain over these areas does not mean they are not allowed to. Because many of these subjects have in the past been included in police officer CBAs, and because the continuation, modification, or deletion of an existing CBA provision is itself a mandatory subject of bargaining, many of these subjects have effectively become mandatory bargaining subjects. Ohio law states public employers are NOT obligated to bargain over the following subjects (unless and to the extent they affect wages, hours, and terms and conditions of employment or provisions of the current CBA):

- “[M]atters 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.”
- “[The right and responsibility of the public employer to] [d]irect, supervise, evaluate, or hire employees.”
- “[The right and responsibility of the public employer to] [m]aintain and improve the efficiency and effectiveness of governmental operations.”
- “[The right and responsibility of the public employer to] [d]etermine the overall methods, process, means, or personnel by which governmental operations are to be conducted.”
- “[The right and responsibility of the public employer to] [s]uspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees.”
- “[The right and responsibility of the public employer to] [d]etermine the adequacy of the work force.”
- “[The right and responsibility of the public employer to] [d]etermine the overall mission of the employer as a unit of government.”
- “[The right and responsibility of the public employer to] [e]ffectively manage the work force.”
- “[The right and responsibility of the public employer to] [t]ake actions to carry out the mission of the public employer as a governmental unit.”
- “The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations, and the original appointments from the eligible lists.”

O.R.C. § 4117.08(A); O.R.C. § 4117.08(B) – (C)(1)-(9).

## What does the collective bargaining process look like?

### Who can initiate collective bargaining, and how does it get initiated?

Collective bargaining can be initiated by either the public employer or the union representing its employees. Either party can initiate collective bargaining by making a request in writing. Under Ohio law, that written notice must be provided 60 days before the expiration of the existing CBA. Under the most recent Columbus FOP CBA, written notice is required 90 days before the CBA's expiration, which was presumably satisfied because negotiations have commenced.

§ 4117.10(B)(1)(a); CBA 38.1

### What is the timeline for negotiations?

Ohio law assumes that the parties will begin negotiations immediately and that the negotiations will be completed prior to the expiration of the existing CBA. However, the latter portion of this is usually unrealistic. In fact, the current Columbus FOP contract specifies that if negotiations continue after the current CBA expires, the new wage terms apply retroactively to the date upon which the current CBA expired. Therefore, the recognition of the likelihood for prolonged negotiation periods is embedded in the current CBA.

O.R.C. §§ 4117.10(B)(2) & (4); CBA 38.3.

### Is there anything a CBA must include?

Yes. The CBA must contain:

- a grievance procedure to handle unresolved grievances and disputed interpretations of the CBA. O.R.C. § 4117.09(B)(1).
- a “dues check-off” provision, which allows the public employer to deduct union dues, initiation fees, and assessments from the paychecks of union members after receiving written authorizations for the deductions from the members. O.R.C. § 4117.09(B).
  - Of note: While the union has a legal obligation to represent all of the employees in the bargaining unit, the employees are not required to be actual members of the union.
- An expiration date which is no more than three years in duration from the date of execution of the CBA. O.R.C. § 4117.09(E).
- **Side note:** Certain provisions of Ohio law can also supersede any conflicting provisions of the CBA, including state laws pertaining to civil rights, affirmative action, retirement benefits for public employees, and residency requirements.

## What happens if the parties are at an impasse?

While Ohio law allows parties to agree to their own processes for breaking impasses during negotiations, the Columbus FOP CBA requires that dispute resolution procedures follow what's outlined in Ohio Revised Code Chapter 4117. This can include the use of:

- **Arbitration:** The statute identifies various forms of arbitration and also a citizens' conciliation council. This form of arbitration, which is fairly common in the public sector, is known as "interest arbitration." In effect, when the parties themselves cannot agree, the arbitrator(s) decide the terms of the parties' CBA (e.g., the new wage rates). O.R.C. § 4117.14(C)(1).
- **Mediation:** In mediation, a "professional" functions as an intermediary between the parties and tries to help them reach agreement. Think of marriage counseling. O.R.C. § 4117.14(C)(2).
- **Fact-finding:** Fact-finders take evidence and make recommendations to the parties about what the terms of their CBA "should" be. The parties are then given a chance to accept the recommendations of the fact-finder(s) and, if both parties don't agree, the recommendations are made public so that the parties will be subject to pressure in the court of public opinion to accept the recommendations of the fact-finders. If the parties still do not agree to accept the fact-finder recommendations, the next step for police officers is a "final offer settlement procedure." O.R.C. § 4117.14(C)(3)-(6); O.R.C. § 4117.14(D)(1).
- **Final Offer Settlement Procedure:** Similar to the fact-finding process described above. The conciliator(s) take evidence and argument regarding each open issue submitted by the parties for resolution. The conciliator(s) are required to adopt either the government's position or the union's position on each issue; this is sometimes referred to as "baseball arbitration." The conciliator(s)' decision is binding on the parties – i.e., it is not merely a recommendation. O.R.C. § 4117.14(G)(1) & (7); O.R.C. § 4117.14(I).
- **Side note:** Police officers and local governments are required to go through the "final offer settlement procedure" if terms are not agreed to because police officers are not allowed to go on strike.



## How do the conciliators make their decision?

In making their decision, the conciliator(s) are obligated to consider the following factors: “[p]ast collectively bargained agreements, if any, between the parties;” “[c]omparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;” “[t]he interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;” “[t]he lawful authority of the public employer;” “[t]he stipulations of the parties;” and “[s]uch other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.”

O.R.C. § 4117.10(G)(7).

## Who ultimately agrees to the terms?

If a new CBA is reached by the negotiators at the bargaining table, a public employer generally has 14 days to request approval of the CBA as well as all necessary funding from its governing legislative body. In Columbus, this legislative body is the City Council with approval by the Mayor. The City Council and the Mayor have 30 days to accept or reject the proposed CBA. Their decision must be applied to the entire CBA (i.e. no cherry-picking, they need to accept or reject the entire package). Once the City Council approves a CBA, it goes to the Mayor for final approval.

O.R.C. § 4117.10(B).

## Can members of the public participate in bargaining meetings?

No. Collective bargaining meetings between public employers and unions are private and not subject to Ohio’s “Open Government” law. However, there are ways to apply pressure without being at the collective bargaining meetings.

O.R.C. § 4117.21.

***See our Columbus Police CBA: Key Players section for more information about how the public can get involved.***



## How, if at all, does home rule affect CBA negotiations?

In Ohio, there is a concept of “Home Rule” embodied in Section 3, Article XVIII, of the Ohio Constitution (the “Home Rule Amendment”) as follows: “Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, **as are not in conflict with general laws.**” On the other hand, the Ohio Constitution also provides, in Section 34, Article II, that “[l]aws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.”

Therefore, if there is a conflict between the Ohio Public Employee’s Collective Bargaining Act (O.R.C. § 4117), which is a state law, and a municipal ordinance, the municipal ordinance must give way to the state law. In other words, principles of “home rule” do not affect the analysis. However, if there is an issue on which the CBA is silent and it is not a mandatory subject of bargaining, then local rules can govern.

## How, if at all, do CBA negotiations interact with due process rights?

Due process implications do not arise from the CBA amendment process because most amendments are forward-looking and not retroactive. However, CBA negotiations can affect the due process rights to which police officers are entitled. For example, police officer CBAs address the due process rights (i.e. the procedural safeguards) for police officers who are being investigated for job-related misconduct. Therefore, if a CBA is amended to change those procedural safeguards, it could affect the due process owed to police officers.

## Does the Columbus Code of Ordinances contain any provisions that could affect the CBA?

The Columbus Code of Ordinances does not contain any provisions regulating the collective bargaining process between the City of Columbus and its police-officers' union (Fraternal Order of Police Lodge No. 9).

The Code of Ordinances does contain a few provisions which easily could have spill-over into the collective bargaining negotiations:

- Chapter 1903 (Police Accident and Criminal Reports): This governs referrals to the Ohio Bureau of Criminal Investigations in cases involving the discharge of firearms and/or use of force among other things. This ordinance was enacted on July 9, 2020.
- Section 1912.03: This section governs the use of body-worn cameras. This ordinance was amended on September 21, 2020.
- Mayor Ginther has also recently announced that Columbus will invest \$4.5 million to improve police body cameras and require officers to use them correctly. ABCNews
- Civilian Review Board: re “amending the city charter to create the Civilian Police Review Board with authority to launch and carry out investigations of alleged police misconduct, subpoena testimony and evidence during the investigations, make recommendations to the Division of Police, and appoint and manage the new position of Inspector General for the Division of Police.” [This is from the ballot issue that was passed in November with 74% of the vote.]

## **Can negotiations occur at any time or only when a contract is about to expire?**

The Columbus CBA provides that in the event the City of Columbus finds it necessary to implement changes to terms and conditions of employment during the term of the current CBA, and if the proposed changes are not otherwise specifically addressed in the CBA, it must notify the union of the proposed change, and the union then has 10 days to make a written demand to bargain over the change.

If the Union requests negotiations, the parties will bargain for a period of not less than 30 and not more than 45 days. If no agreement is reached during this period, the parties will engage in mediation for not more than 30 days or until an “impasse” is declared. At this point, the City can either implement its last offer and submit the dispute to interest arbitration, or it can maintain the status quo and submit the dispute to arbitration. The role of the arbitrator is to decide if the change sought by the City should be adopted into the parties’ CBA. The decision of the arbitrator is final and binding.

CBA 38.4(B); CBA 38.4(C); CBA 38.4(D).

## **Where are we in this process as of January 2021?**

The CBA expired on December 8, 2020. However, no agreement for a new CBA was reached prior to its expiration. After only one meeting on November 12, 2020, the collective bargaining was effectively put on hold due to COVID-19 related restrictions on in-person meetings and, at least as of early January, the parties had not yet exchanged any proposals.

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