

TO: Jason Butler, National Representative AFT
and Chief Spokesperson

FROM: Dan Guttman, BakerHostetler
and Chief Spokesperson

DATE: July 22, 2026

SUBJECT: Ohio University Position as to Negotiation Observers

The University team is looking forward to Thursday's collective bargaining session. We are ready and hope to finalize negotiations on the open discipline and grievance articles.

Before we resume negotiations, we thought it prudent to again restate the University position on including negotiation "observers" in the room over our team's objection.

As you recall, as the University team entered the negotiating session on June 30 there were around ten additional people in the room wearing AFT/AAUP shirts and sitting behind and to the side of the bargaining table. You explained they were bargaining unit members who were going to join the session as observers during our negotiations. Our team received no prior notice as to your intention of including these observers. We stated an immediate objection and asked you to remove the observers so we could continue our planned session. We then broke into a caucus awaiting your response. On our way out of the bargaining room, we were met by another bargaining unit member who was videotaping our entrance and exit from the room. It is my understanding that these video images have since been posted as an AFT/AAUP negotiation update. We do not believe the unannounced inclusion of observers or the person positioned right outside the door to video record our team's entrance, exit, and response was a sign of good faith.

After our team was able to conduct some quick research during the caucus, we noted our position on this issue in a text message and a follow-up email. We noted in text message:

"Jason, we are ready and able to bargain with the bargaining teams, but not with the bargaining unit observers who are not team members. Please let me know after hearing our objection if you would like to proceed today. Because we did not have any advance notice, we were only able to quickly review the [Ohio Revised Code] and some cases, however we are confident that as we discussed, there are no ground rules where we consented to non-team members who may be bargaining unit members to sit in as observers. We believe doing so would have a chilling effect on our negotiations, and we do not consent to that. Again, we would be glad to bargain with your bargaining team today, but do believe you may not unilaterally invite unapproved bargaining unit members to sit in on negotiations as "observers" over the other party's objection. Doing so constitutes a bad-faith refusal to bargain. Let me know if you want to proceed with our bargaining teams."

The follow-up email again stated our objection and even attached a few SERB decisions and cases we were able to quickly locate. We also attached the proposal we had prepared to negotiate and noted:

“...Attached is our Article 21 Discipline proposal that the university was prepared to present at 11 this morning. As we discussed, we are still willing to negotiate this and other items with your bargaining team today - but not with “observers” in the room. Also, we do not believe it would be productive to change the way we both have been bargaining by now passing proposals through “side bars,” caucuses or in the hallway just to accommodate the observers in the main bargaining room.

Although we cannot agree to your inclusion of the observers, we want to continue the progress and positive momentum we have at the table over the past handful of sessions. If you want to continue with our traditional bargaining process today, let me know as our team will be here working and available until 5 as scheduled.”

Now, as we finish our preparations for Thursday’s session, we again want to make clear that our position on including observers in the negotiating room has not changed. Collective bargaining is private by default in Ohio, and we do not believe you have a right to “open” the room to observers without the express, mutual consent of the employer. In fact, you raised the issue of including observers on August 4, 2025, after we proposed formal ground rules (that you refused to adopt) and even at that time the University objected to such a request. Because ground rules—including who can physically sit in the room as an observer—are permissive, neither a public employer nor a public union can insist upon them to an impasse. We believe it to be an unfair labor practice and bad faith to condition bargaining upon the inclusion of observers in the room over the employer’s explicit objection.

Finally, although Section 4117.21 clearly mandates that collective bargaining meetings in Ohio’s public sector are private, the Ohio courts and SERB routinely look to National Labor Relations Board (NLRB) and other state’s collective bargaining decisions as persuasive authority. In this regard, not only does the NLRB provide the employer the ability to object to observers, but other states have addressed this issue as well. For example, in Massachusetts, looking at a similar set of facts it was held that it is the employer’s right to refuse observers (Town of Norton, 3 MLC 1140 (September 21, 1976)): “The presence of members of the town’s and union officials’ constituencies distract those officials from concentrating their efforts toward a solution of the issues before them and dampen their willingness to make compromises that affect the personal interests of some of the people they represent.” Similarly, the NLRB has noted that, “Extending bargaining to such observers—by either side, over the objection to the other—would raise the potential for mischief and serious interference with good-faith bargaining.” *See*, Brooke Glen Behavioral Hospital, 365 NLRB No. 79 (May 15, 2017).

As indicated on June 30, we will again be ready to bargain in good faith, but not with observers in the room.