



ZASHIN & RICH

# Employment Matters Affecting Public Employers

Jonathan J. Downes

17 South High Street, Suite 750

Columbus, Ohio 43215

[www.zrlaw.com](http://www.zrlaw.com)

# Jonathan J. Downes

- **Over thirty years representing public and private employers**
- **Fellow in the College of Labor and Employment Lawyers**
- **AV Preeminent rated by Martindale Hubbell.**
- **Adjunct Professor, Fisher College of Business-Graduate, OSU**
- **Negotiated over 500 labor contracts including State-wide, State Elected Officials, Counties, Cities, Townships, etc.**
- **Over 250 mediations, arbitrations, Factfinding, & Conciliation hearings; frequent speaker on negotiations and impasse**
- **Represents employers in arbitrations, organizing campaigns, administrative hearings in trial and appellate courts, State and Federal courts**
- **Ohio State Bar Association Certified Specialist in Labor and Employment Law**
- **Selected as: Best Lawyers in America; America's Most Honored Lawyers; Top Attorneys in Ohio; Top 50 Central Ohio Lawyers; and an Ohio "Super Lawyer".**



AV<sup>®</sup> PREEMINENT™  
Martindale-Hubbell®  
Lawyer Ratings

Employment Matters Affecting Ohio  
Employers

OSBA Certified Specialist  
in Labor and Employment Law



# Employment and Labor Law Group

Zashin & Rich's Employment Group has extensive experience representing public sector entities, large and small businesses, and non-profit organizations in:

- **Litigation and Insurance Defense**
- **Discrimination and Retaliation**
- **General Employment Counseling**
- **Labor Law**
- **Collective Bargaining**
- **FLSA, Wage and Hour Issues**
- **Worker's Compensation**
- **Restrictive Covenants**
- **Employee Handbooks**
- **Unemployment Compensation**
- **Civil Service Law**
- **Public Records/Sunshine Laws**

## **Discrimination Laws**

**Title VII**

**ADA**

**ADEA**

**FMLA**

**PDA**

**others**



# Today's Agenda

**This session provides, from the labor and employment perspective, an overview of current trends impacting the government entities including impact of the economy, collective bargaining, economic trends, labor, and union issues. Impact of federal grants on labor and human resource management.**

**Goals of the session are to identify**

- 1. Current employment trends**
- 2. Economic trends**
- 3. Historic measures**
- 4. Impact of federal grants**
- 5. Union negotiations**
- 6. Employee**
  - 1. Recruitment**
  - 2. Retention**



# Discrimination

## Sexual Orientation and Identification

- In each of three cases consolidated before the Court, an employer allegedly fired a long-time employee simply for being homosexual or transgender.
- The United States Court held that employers violated Title VII of the Civil Rights Act of 1964 when they fired a long-time employee shortly after the employee revealed that he or she was homosexual or transgender
- Court found that it was impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.

*Altitude Express, Inc. v. Melissa Zarda and William Moore, as Co-Executors of the Estate of Donald Zarda* (Sexual Orientation)

*R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC and Aimee Stephens* (Transgender/Transitioning)

*Bostock v. Clayton County, GA*, 140 S. Ct. 1731 (2020) (Sexual Orientation)



# First Amendment Cases

## Has The Supreme Court Slightly Opened The Free Speech Door for Public Employees?

*Kennedy v. Bremerton School District*, No 21-418 (2022).

### ***And Now the Union Would Like a Word in Private***

Under Janus, government workers don't have to join or pay. But behind closed doors it's hard to say no.

[www.wsj.com/articles/and-now-the-union-would-like-a-word-in-private-orientation-dues-rights-janus-supreme-court-new-york-california-management-11661541278WSJ](https://www.wsj.com/articles/and-now-the-union-would-like-a-word-in-private-orientation-dues-rights-janus-supreme-court-new-york-california-management-11661541278WSJ)



# Freedom of Speech Challenges

## Do Laws Against Workplace Harassment Violate Free Speech?

***“There’s little difference between the Civil Rights Act of 1964 and Florida’s Stop WOKE Act “***

[Do Laws Against Workplace Harassment Violate Free Speech? – WSJ](#)

**Shawnee State to pay professor \$400,000 in settlement over student's preferred pronouns**

*Meriwether v. The Trustees of Shawnee State University,*  
6<sup>th</sup> Cir. 3-26-2021 No. 20-3289



# Changing Workforce

## ***“If Your Co-Workers Are ‘Quiet Quitting,’ Here’s What That Means”***

**Some Gen Z professionals are saying no to hustle culture; ‘I’m not going to go extra mile’**

[If Your Co-Workers Are ‘Quiet Quitting,’ Here’s What That Means - WSJ](#)





# Budgets and Impact on Employment

Budget and Planning – key elements unions examine

- Operating Budget
- Capital Budget
- Debt Reduction
- Budget stabilization fund

From a negotiations impact solid requirements for rainy day funds and carryover are imperative.



# Ohio Office of Budget and Management

## August 2022 Financial Report

Economic Outlook according to the Bureau of Economic Analysis advance estimate, Real GDP **decreased** in the second quarter of calendar year 2022 at an annualized rate of 0.9 percent. This is the second consecutive quarter where GDP decreased, following increases in every quarter during calendar year 2021.

The second quarter decrease in real GDP resulted from decreases in private inventories (-2.0 percentage points), fixed investment (-0.7 percentage points) and government expenditures (-0.3 percentage points). These decreases were partially offset by increases in net exports (1.4 percentage points) and personal consumption expenditures (0.7 percentage points)



# Ohio Labor Force Participation

## August 2022 report

Ohio July nonfarm payroll employment decreased 0.2 percent (11,300 jobs) to 5.5 million jobs between May and June 2022 or 1.8 percent above the number of jobs in June 2021.

Government and manufacturing industries had the largest job declines in June. Losses were partially offset by job gains in the education and health services, other services, and construction.

Ohio Labor force participation rate in June was **62.0%** unchanged from May.

Ohio's employee-population ratio increased by 0.1 percentage point to 59.6 in June 2022.



# Federal Grants and Largesse

The U.S. Department of Treasury issued the following updated guidance on the use of State and Local Fiscal Recovery Funds:

- CRF Interim Final Rule

<https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

- FAQ's

<https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>

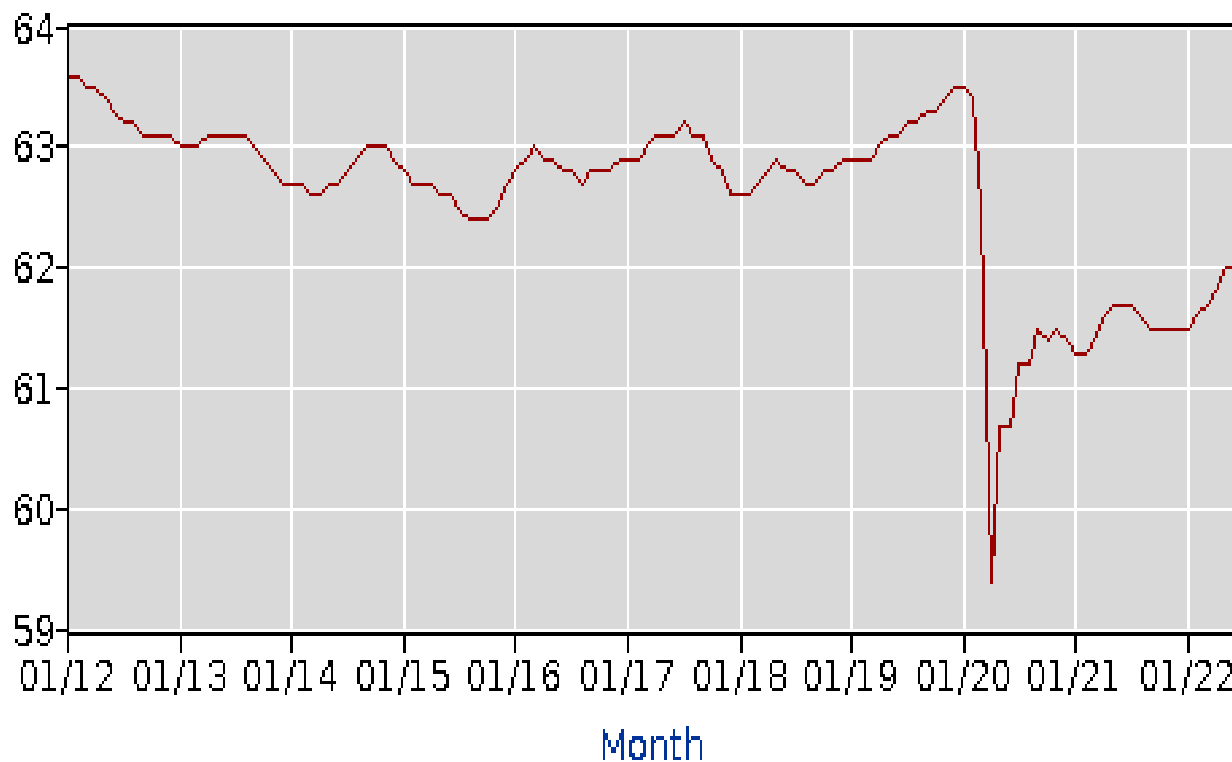
- Quick Reference Guide

<https://home.treasury.gov/system/files/136/SLFRP-Quick-Reference-Guide-FINAL-508a.pdf>



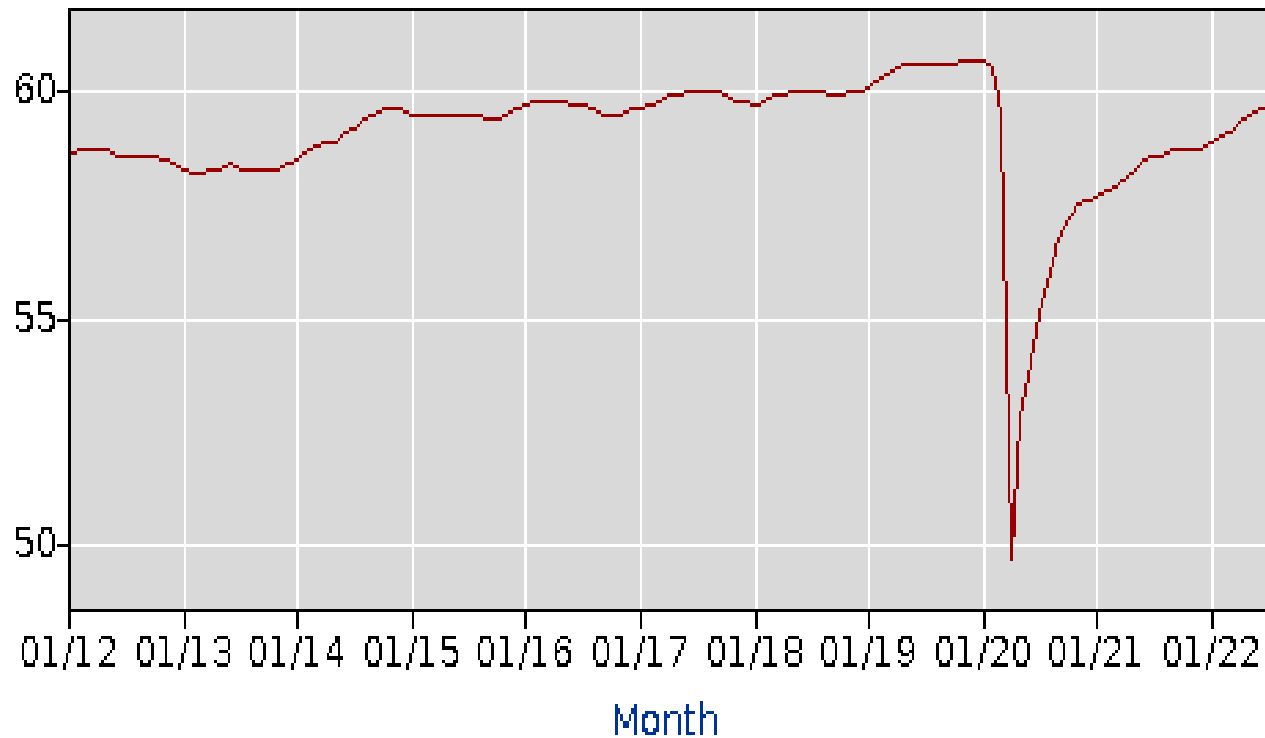
# Ohio Labor Force Participation Rate

## labor force participation rate



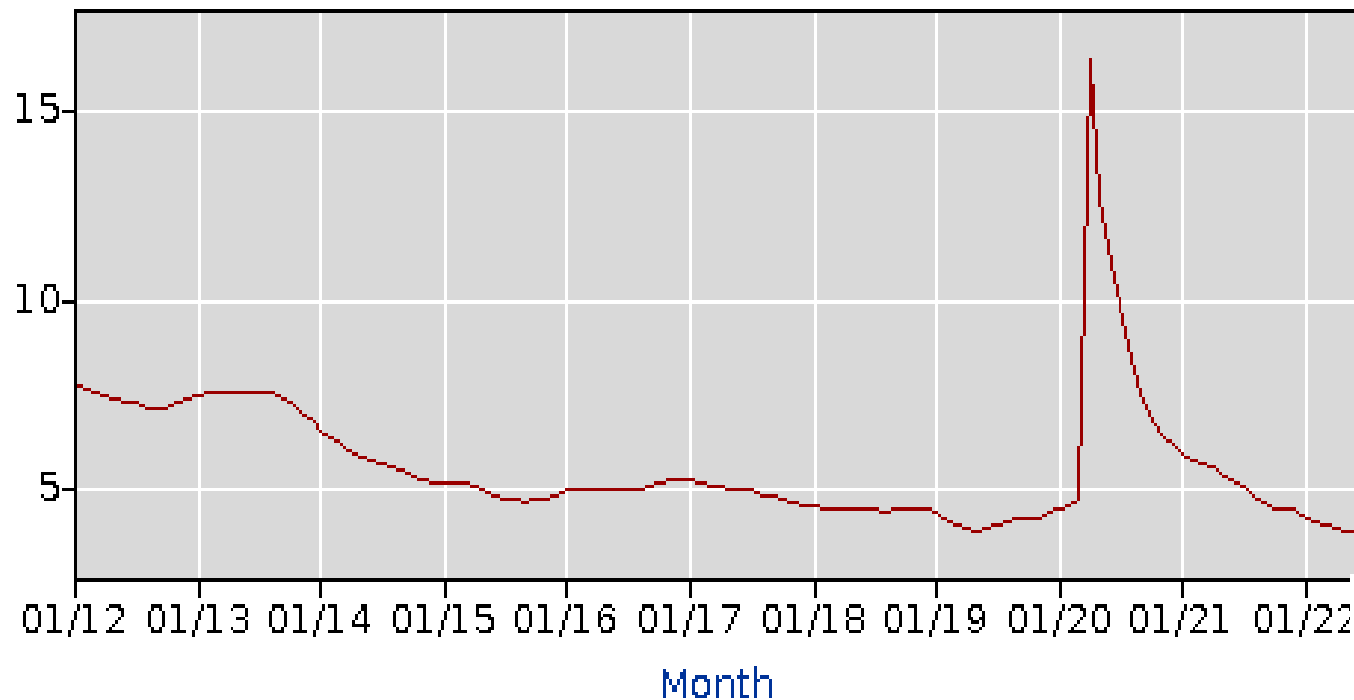
# Ohio – Employment Population Ratio

employment-population ratio

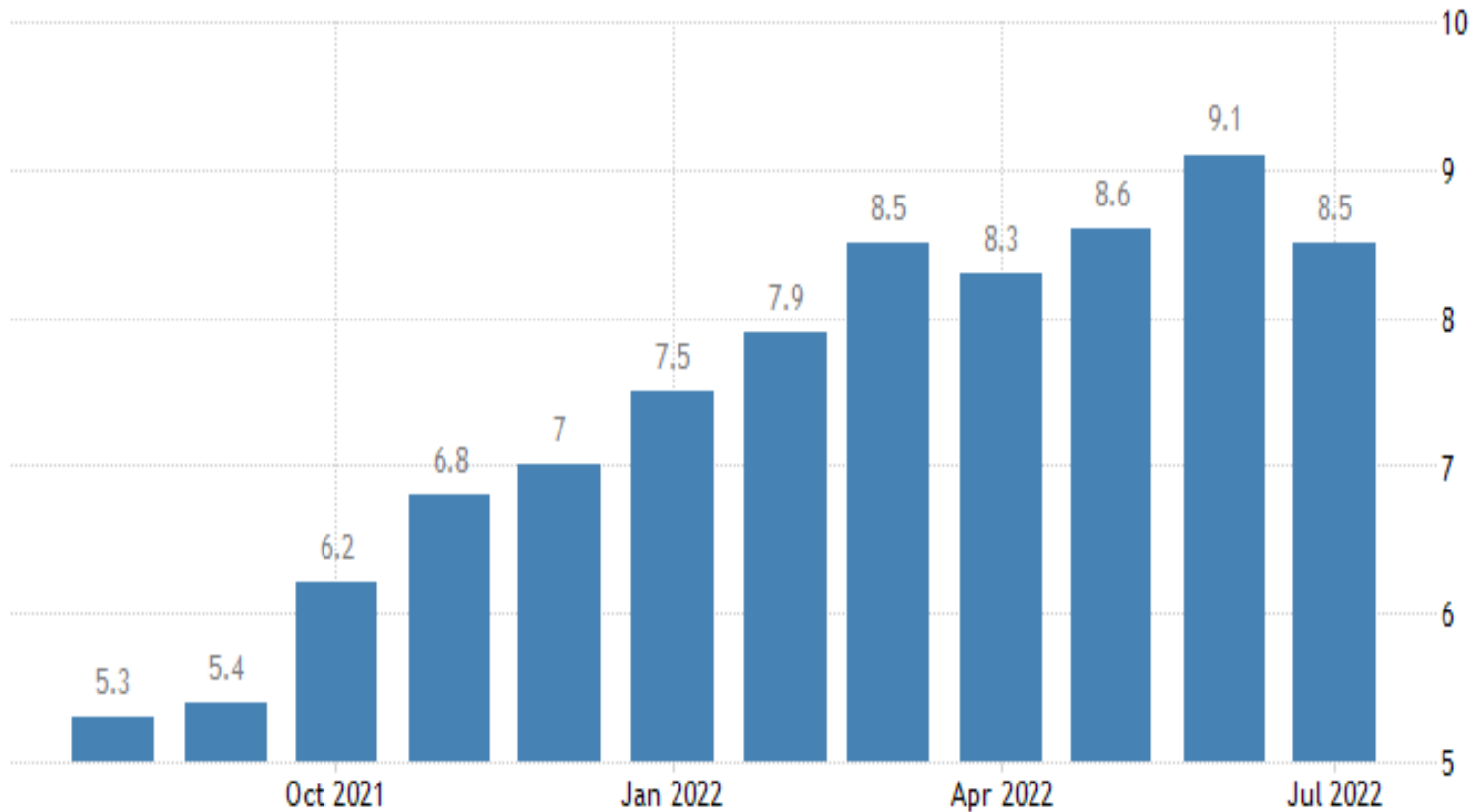


# Ohio Unemployment Rate

unemployment rate



# Inflation Rate



TRADINGECONOMICS.COM | U.S. BUREAU OF LABOR STATISTICS





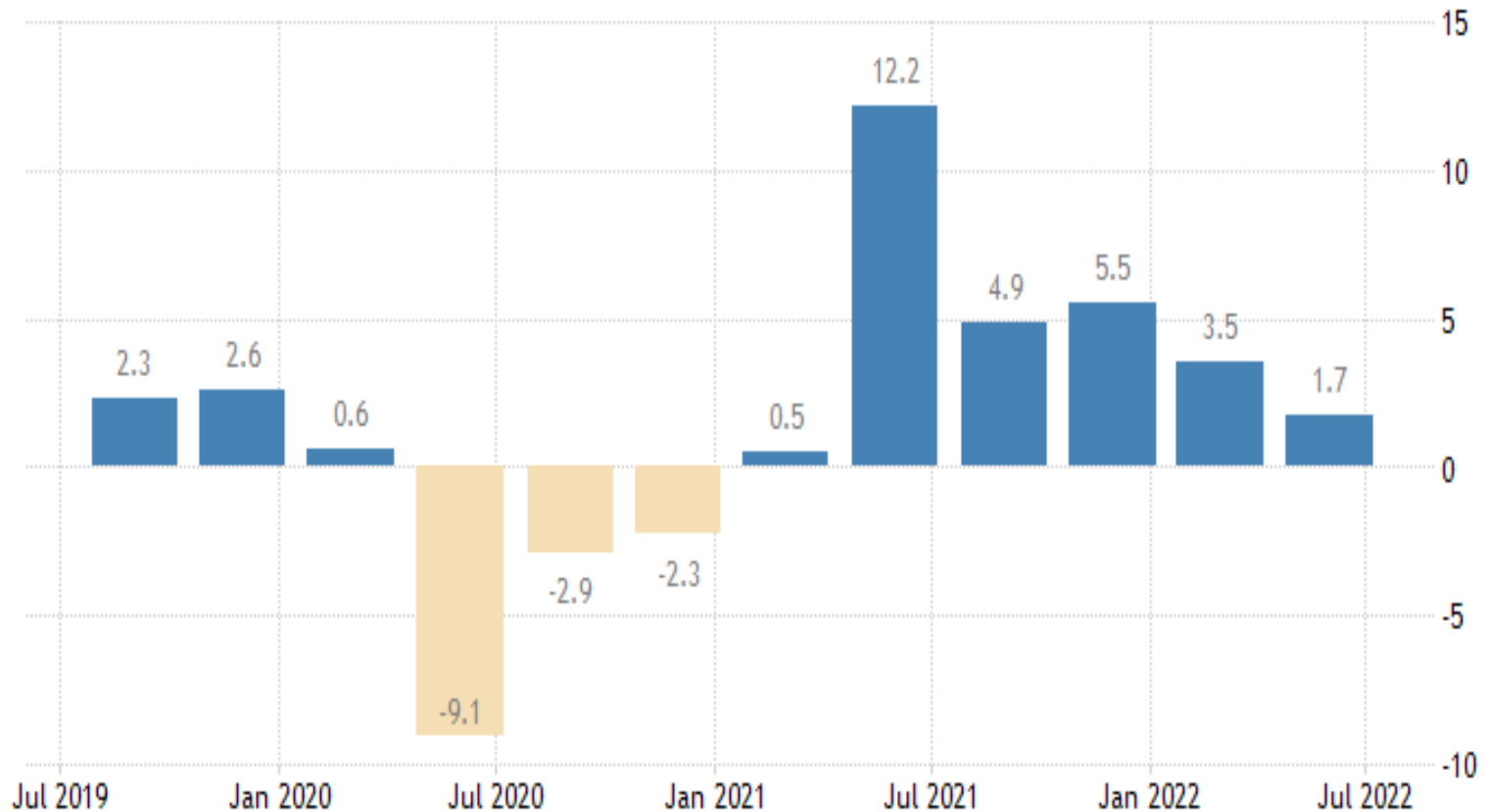
# Inflation

## Inflation Hits New Four-Decade High of 9.1%

**Impact on**  
**wages**  
**supplies**



# Gross Domestic Product



TRADINGECONOMICS.COM | U.S. BUREAU OF ECONOMIC ANALYSIS



# Settlement Trends – Ohio SERB Data

## Before the Pandemic

Fewer factfinding and conciliation reports but higher awards  
Ohio Conciliation awards @ 2.6 % in 4<sup>th</sup> quarter 2019

- ❖ Unions proposing
  - ❖ Lateral transfers
  - ❖ Higher payouts
  - ❖ Larger comp time banks and leave balances



# Settlement Trends – Ohio SERB Data

## After the Pandemic

Fewer factfinding and conciliation reports but higher awards

Factfinding and Conciliation awards @ 3.25% in 2<sup>nd</sup> quarter 2022

- ❖ Unions proposing
  - ❖ Lateral transfers
  - ❖ Higher payouts
  - ❖ Larger comp time banks and leave balances



# Negotiations Charts

## Visually demonstrate the Budget and Economy

For both negotiations and impasse hearings

- Revenue and Expenses history and trends
- Year end / carryover balances
- Revenue, CPI & wage Increases
- Demographic information
- Expenditures by category



# Wildcard – Union Negotiations and Impasse Proceedings

## Economic presentation – consider including:

- Demographics comparisons
- Revenue (e.g., income tax) trends
- Revenue vs. Expenditures
- Source of income tax income (by industry)
- Insurance costs and increases
- Budget year-over-year comparison
- Annual revenue and expenses
- Year-end balances

Also useful for briefing legislative body.



# Economic Data for Negotiations & Impasse

## General Fund

### Sources, Trends, Totals and Projections

Income Tax

Real Estate

Personal Property

Other (specify)

Interest Income

Local Government Fund

EMT Services

**BEWARE:** Union use of CAFR and “expert witness”

**Educate - Educate - Educate**



# Look for the Big Picture

## Big Picture and Details

**Changed Circumstances**

**economic**

**social**

**View the long range – back to the Great Recession**

**Educate employees and unions**

**Long term planning**





9/5/2022

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# THANK YOU!

## Jonathan Downes, Esq.

17 South High Street, Suite 900

Columbus, Ohio 43215

Cell: 614-565-2075

[jjd@zrlaw.com](mailto:jjd@zrlaw.com)

