

HR 413 IH

111th CONGRESS

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H. R. 413

To provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

IN THE HOUSE OF REPRESENTATIVES

January 9, 2009

Mr. KILDEE (for himself and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Public Safety Employer-Employee Cooperation Act of 2009`.

SEC. 2. FINDINGS AND DECLARATION OF PURPOSE.

Congress finds the following:

- (1) Labor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. In many public safety agencies it is the union that provides the institutional stability as elected leaders and appointees come and go.
- (2) State and local public safety officers play an essential role in the efforts of the United States to detect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials, and other mass casualty incidents. As the first to arrive on scene, State and local public safety officers must be prepared to protect life and property and to preserve scarce and vital Federal resources, avoid substantial and debilitating interference with interstate and foreign commerce, and to protect the national security of the United States. Public safety employer-employee cooperation is essential in meeting these needs and is, therefore, in the National interest.
- (3) The health and safety of the Nation and the best interests of public safety employers and employees may be furthered by the settlement of issues through the processes of collective bargaining.
- (4) The Federal Government is in the position to encourage conciliation, mediation, and voluntary arbitration to aid and encourage employees and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts through negotiations to settle their differences by mutual agreement reached through collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes.
- (5) The potential absence of adequate cooperation between public safety employers and employees has implications for the security of employees, impacts the upgrading of police and fire services of local communities, the health and well-being of public safety officers, and the morale of the fire and police departments, and can affect interstate and intrastate commerce.
- (6) Many States and localities already provide public safety officers with collective bargaining rights comparable to or greater than the rights and responsibilities set forth in this Act, and such State laws should be respected.

SEC. 3. DEFINITIONS.

In this Act:

- (1) The term `Authority' means the Federal Labor Relations Authority.
- (2) The term `public safety officer'--
 - (A) means an employee of a public safety agency who is a law enforcement officer, a firefighter, or emergency medical services personnel;
 - (B) includes an individual who is temporarily transferred to a supervisory or management position; and
 - (C) does not include a permanent supervisory or management employee.
- (3) The term `firefighter' has the same meaning given the term `employee in fire protection activities' defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203(y)).
- (4) The term `emergency medical services personnel' means an individual who provides out-of-hospital emergency medical care, including an emergency medical technician, paramedic, or first responder.
- (5) The term `law enforcement officer' has the same meaning given such term in section 1204(5) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(5)).
- (6) The term `supervisory employee' has the meaning given such term, or a substantially equivalent term, under applicable State law on the date of enactment of this Act. In the absence of such State law on the date of enactment of this Act, the term means an individual, employed by a public safety employer, who--
 - (A) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment; and
 - (B) devotes a preponderance of employment time exercising such authority.
- (7) The term `management employee' has the meaning given such term, or a substantially equivalent term, under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual employed by a public safety employer in a

position that requires or authorizes the individual to formulate, determine, or influence the policies of the employer.

(8) The terms `employer' and `public safety agency' mean any State, political subdivision of a State, the District of Columbia, or any territory or possession of the United States that employs public safety officers.

(9) The term `labor organization' means an organization composed in whole or in part of employees, in which employees participate, and the purpose of which is to represent such employees before public safety agencies concerning grievances, conditions of employment and related matters.

(10) The term `substantially provides' means substantial compliance with the rights and responsibilities described in section 4(b).

SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBILITIES.

(a) Determination-

(1) **IN GENERAL-** Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination as to whether a State substantially provides for the rights and responsibilities described in subsection (b). In making such determinations, the Authority shall consider the opinion of affected employers and labor organizations. Where the Authority is notified by an employer and an affected labor organization that both parties agree that the law applicable to such employer and labor organization substantially provides for the rights and responsibilities described in subsection (b), the Authority shall give such agreement weight to the maximum extent practicable in making its determination under this subsection.

(2) **SUBSEQUENT DETERMINATIONS-** (A) A determination made pursuant to paragraph (1) shall remain in effect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).

(B) An employer or a labor organization may submit a written request for a subsequent determination, on the basis of a material change in State law or its interpretation. If the Authority determines that a material change in State law or its interpretation has occurred, the Authority shall issue a subsequent determination not later than 30 days after receipt of such request.

(3) **JUDICIAL REVIEW-** Any person aggrieved by a determination of the Authority under this section may, during the 60-day period beginning on the date on which the determination was made, petition any United States Court of Appeals in the circuit in which the person resides or transacts business or in District of Columbia circuit, for judicial review. In any judicial review of a determination by the Authority, the procedures contained in section 7123(c) of title 5, United States Code, shall be followed.

(b) **Rights and Responsibilities-** In making a determination described in subsection (a), the Authority shall consider a State's law to provide adequate rights and responsibilities unless such law fails to substantially provide rights and responsibilities comparable to or greater than each of the following:

(1) Granting public safety officers the right to form and join a labor organization, which may exclude management and supervisory employees, that is, or seeks to be, recognized as the exclusive bargaining representative of such employees.

(2) Requiring public safety employers to recognize the employees' labor organization (freely chosen by a majority of the employees), to agree to bargain with the labor organization, and to commit any agreements to writing in a contract or memorandum of understanding.

(3) Providing for bargaining over hours, wages, and terms and conditions of employment.

(4) Making available an interest impasse resolution mechanism, such as fact-finding, mediation, arbitration, or comparable procedures.

(5) Requiring enforcement through State courts of--

(A) all rights, responsibilities, and protections provided by State law and enumerated in this subsection; and

(B) any written contract or memorandum of understanding.

(c) Failure To Meet Requirements-

(1) **IN GENERAL-** If the Authority determines, acting pursuant to its authority under subsection (a), that a State does not substantially provide for the rights and responsibilities described in subsection (b), such State shall be subject to the regulations and procedures described in section 5.

(2) **EFFECTIVE DATE-** Paragraph (1) shall apply in each State on the later of--

(A) 2 years after the date of enactment of this Act; or

(B) the date of the end of the first regular session of the legislature of that State that begins after the date of the enactment of this Act.

SEC. 5. ROLE OF THE AUTHORITY.

(a) **In General-** Not later than 1 year after the date of the enactment of this Act, the Authority shall issue regulations establishing procedures which provide the rights and responsibilities described in section 4(b) for public safety employers and officers in States which the Authority has determined, acting pursuant to its authority under section 4(a), do not substantially provide for such rights and responsibilities.

(b) **Role of the Federal Labor Relations Authority-** The Authority, to the extent provided in this Act and in accordance with regulations prescribed by the Authority, shall--

(1) determine the appropriateness of units for labor organization representation;

(2) supervise and conduct elections to determine whether a labor organization has been selected as an exclusive representative by a voting majority of the employees in an appropriate unit;

(3) resolve issues relating to the duty to bargain in good faith;

(4) conduct hearings and resolve complaints of unfair labor practices;

(5) resolve exceptions to the awards of arbitrators;

(6) protect the right of each employee to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and protect each employee in the exercise of such right;

(7) if the Authority finds that any State is not in compliance with the regulations prescribed under subsection (a), direct compliance by such State by order; and

(8) take such other actions as are necessary and appropriate to effectively administer this Act, including issuing subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States, and administering oaths, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining

witnesses.

(c) Enforcement-

(1) PETITION BY AUTHORITY- If a State fails to comply with a final order issued by the Authority, the Authority shall petition any United States Court of Appeals with jurisdiction over the parties or the United States Court of Appeals for the District of Columbia Circuit to enforce any final orders under this section, and for appropriate temporary relief or a restraining order. Any petition under this section shall be conducted in accordance with section 7123(c) and (d) of title 5, United States Code, except that any final order of the Authority with respect to questions of fact shall be found to be conclusive unless the court determines that the Authority's decision was arbitrary and capricious.

(2) RIGHT OF ACTION- Unless the Authority has filed a petition for enforcement as provided in paragraph (1), any interested party shall have the right to file suit against any political subdivision of a State, or, if the State has waived its sovereign immunity, against the State itself, in any district court of the United States of competent jurisdiction to enforce compliance with the regulations issued by the Authority pursuant to subsection (b), to enforce compliance with any order issued by the Authority pursuant to this section, or to enforce section 6 of this Act. The right provided by this paragraph to bring a suit to enforce compliance with any order issued by the Authority pursuant to this section shall terminate upon the filing of a petition seeking the same relief by the Authority under paragraph (1).

SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.

Notwithstanding any rights or responsibilities provided under State law or under regulations issued by the Authority under section 5--

- (1) a public safety employer may not engage in a lockout of public safety officers;
- (2) public safety officers may not engage in a strike against such public safety employer; and
- (3) a labor organization may not call for a strike by public safety officers against their public safety employer.

SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

This Act and the regulations issued under this Act shall not be construed to invalidate a certification, recognition, collective bargaining agreement, or memorandum of understanding which has been issued, approved, or ratified by any public employee relations board or commission or by any State or political subdivision or its agents (management officials) in effect on the day before the date of enactment of this Act, or the results of any election held before the date of enactment of this Act.

SEC. 8. CONSTRUCTION, COMPLIANCE, AND ENFORCEMENT.

(a) Construction- Nothing in this Act or the regulations issued under this Act shall be construed--

- (1) to preempt or limit the remedies, rights, and procedures of any law of any State or political subdivision of any State or jurisdiction that substantially provides greater or comparable rights and responsibilities described in section 4(b);
- (2) to prevent a State from enforcing a State law which prohibits employers and labor organizations from negotiating provisions in a labor agreement that require union membership or payment of union fees as a condition of employment;
- (3) to preempt any State law in effect on the date of enactment of this Act that substantially provides for the rights and responsibilities described in section 4(b) solely because--
 - (A) such State law permits an employee to appear in his or her own behalf with respect to his or her employment relations with the public safety agency involved;
 - (B) such State law excludes from its coverage employees of a state militia or national guard;
 - (C) such rights and responsibilities have not been extended to other categories of employees covered by this Act, in which case the Authority shall only exercise the powers provided in section 5 of this Act with respect to those categories of employees who have not been afforded the rights and responsibilities described in section 4(b); or
 - (D) such laws or ordinances provide that a contract or memorandum of understanding between a public safety employer and a labor organization must be presented to a legislative body as part of the process for approving such contract or memorandum of understanding;
- (4) to permit parties in States subject to the regulations and procedures described in section 5 to negotiate provisions that would prohibit an employee from engaging in part-time employment or volunteer activities during off-duty hours;
- (5) to require a State to rescind or preempt laws or ordinances of any of its political subdivisions if such laws substantially provide rights and responsibilities for public safety officers that are comparable to or greater than the rights and responsibilities enumerated in section 4(b) of this Act; or
- (6) preempt any State law that substantially provides for the rights and responsibilities described in section 4(b) solely because such law does not require bargaining with respect to pension and retirement benefits.

(b) Partial Exemption- A State may exempt from its State law, or from the requirements established under this Act, a political subdivision of the State that has a population of less than 5,000 or that employs fewer than 25 full time employees. For purposes of this subsection, the term 'employees' includes each individual employed by the political subdivision except any individual elected by popular vote or appointed to serve on a board or commission.

(c) Enforcement- Notwithstanding any other provision of the Act, and in the absence of a waiver of a State's sovereign immunity, the Authority shall have the exclusive power to enforce the provisions of this Act with respect to public safety officers employed by a State.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

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