

109TH CONGRESS
1ST SESSION

S. 513

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

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2005

Mr. GREGG (for himself, Mr. KENNEDY, Ms. MIKULSKI, Mr. HARKIN, Mr. BINGAMAN, Mr. REED, Mrs. MURRAY, Mrs. LINCOLN, Mr. KERRY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Safety Em-
5 ployer-Employee Cooperation Act of 2005”.

6 **SEC. 2. DECLARATION OF PURPOSE AND POLICY.**

7 The Congress declares that the following is the policy
8 of the United States:

1 (1) Labor-management relationships and part-
2 nerships are based on trust, mutual respect, open
3 communication, bilateral consensual problem solving,
4 and shared accountability. Labor-management co-
5 operation fully utilizes the strengths of both parties
6 to best serve the interests of the public, operating as
7 a team, to carry out the public safety mission in a
8 quality work environment. In many public safety
9 agencies it is the union that provides the institu-
10 tional stability as elected leaders and appointees
11 come and go.

12 (2) The Federal Government needs to encour-
13 age conciliation, mediation, and voluntary arbitra-
14 tion to aid and encourage employers and their em-
15 ployees to reach and maintain agreements con-
16 cerning rates of pay, hours, and working conditions,
17 and to make all reasonable efforts through negotia-
18 tions to settle their differences by mutual agreement
19 reached through collective bargaining or by such
20 methods as may be provided for in any applicable
21 agreement for the settlement of disputes.

22 (3) The absence of adequate cooperation be-
23 tween public safety employers and employees has im-
24 plications for the security of employees and can af-
25 fect interstate and intrastate commerce. The lack of

1 such labor-management cooperation can detrimen-
2 tally impact the upgrading of police and fire services
3 of local communities, the health and well-being of
4 public safety officers, and the morale of the fire and
5 police departments. Additionally, these factors could
6 have significant commercial repercussions. Moreover,
7 providing minimal standards for collective bar-
8 gaining negotiations in the public safety sector can
9 prevent industrial strife between labor and manage-
10 ment that interferes with the normal flow of com-
11 merce.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **AUTHORITY.**—The term “Authority” means
15 the Federal Labor Relations Authority.

16 (2) **EMERGENCY MEDICAL SERVICES PER-**
17 **SONNEL.**—The term “emergency medical services
18 personnel” means an individual who provides out-of-
19 hospital emergency medical care, including an emer-
20 gency medical technician, paramedic, or first re-
21 sponder.

22 (3) **EMPLOYER; PUBLIC SAFETY AGENCY.**—The
23 terms “employer” and “public safety agency” mean
24 any State, political subdivision of a State, the Dis-
25 trict of Columbia, or any territory or possession of

1 the United States that employs public safety offi-
2 cers.

3 (4) FIREFIGHTER.—The term “firefighter” has
4 the meaning given the term “employee engaged in
5 fire protection activities” in section 3(y) of the Fair
6 Labor Standards Act (29 U.S.C. 203(y)).

7 (5) LABOR ORGANIZATION.—The term “labor
8 organization” means an organization composed in
9 whole or in part of employees, in which employees
10 participate, and which represents such employees be-
11 fore public safety agencies concerning grievances,
12 conditions of employment and related matters.

13 (6) LAW ENFORCEMENT OFFICER.—The term
14 “law enforcement officer” has the meaning given
15 such term in section 1204(5) of the Omnibus Crime
16 Control and Safe Streets Act of 1968 (42 U.S.C.
17 3796b(5)).

18 (7) MANAGEMENT EMPLOYEE.—The term
19 “management employee” has the meaning given
20 such term under applicable State law in effect on
21 the date of enactment of this Act. If no such State
22 law is in effect, the term means an individual em-
23 ployed by a public safety employer in a position that
24 requires or authorizes the individual to formulate,
25 determine, or influence the policies of the employer.

1 (8) PUBLIC SAFETY OFFICER.—The term “pub-
2 lic safety officer”—

3 (A) means an employee of a public safety
4 agency who is a law enforcement officer, a fire-
5 fighter, or an emergency medical services per-
6 sonnel;

7 (B) includes an individual who is tempo-
8 rarily transferred to a supervisory or manage-
9 ment position; and

10 (C) does not include a permanent super-
11 visory or management employee.

12 (9) SUBSTANTIALLY PROVIDES.—The term
13 “substantially provides” means compliance with the
14 essential requirements of this Act, specifically, the
15 right to form and join a labor organization, the right
16 to bargain over wages, hours, and conditions of em-
17 ployment, the right to sign an enforceable contract,
18 and availability of some form of mechanism to break
19 an impasse, such as arbitration, mediation, or fact
20 finding.

21 (10) SUPERVISORY EMPLOYEE.—The term “su-
22 pervisory employee” has the meaning given such
23 term under applicable State law in effect on the date
24 of enactment of this Act. If no such State law is in

1 effect, the term means an individual, employed by a
 2 public safety employer, who—

3 (A) has the authority in the interest of the
 4 employer to hire, direct, assign, promote, re-
 5 ward, transfer, furlough, lay off, recall, sus-
 6 pend, discipline, or remove public safety offi-
 7 cers, to adjust their grievances, or to effectively
 8 recommend such action, if the exercise of the
 9 authority is not merely routine or clerical in na-
 10 ture but requires the consistent exercise of
 11 independent judgment; and

12 (B) devotes a majority of time at work ex-
 13 ercising such authority.

14 **SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBIL-**
 15 **ITIES.**

16 (a) DETERMINATION.—

17 (1) IN GENERAL.—Not later than 180 days
 18 after the date of enactment of this Act, the Author-
 19 ity shall make a determination as to whether a State
 20 substantially provides for the rights and responsibil-
 21 ities described in subsection (b). In making such de-
 22 terminations, the Authority shall consider and give
 23 weight, to the maximum extent practicable, to the
 24 opinion of affected parties.

25 (2) SUBSEQUENT DETERMINATIONS.—

1 (A) IN GENERAL.—A determination made
2 pursuant to paragraph (1) shall remain in ef-
3 fect unless and until the Authority issues a sub-
4 sequent determination, in accordance with the
5 procedures set forth in subparagraph (B).

6 (B) PROCEDURES FOR SUBSEQUENT DE-
7 TERMINATIONS.—Upon establishing that a ma-
8 terial change in State law or its interpretation
9 has occurred, an employer or a labor organiza-
10 tion may submit a written request for a subse-
11 quent determination. If satisfied that a material
12 change in State law or its interpretation has oc-
13 curred, the Director shall issue a subsequent
14 determination not later than 30 days after re-
15 ceipt of such request.

16 (3) JUDICIAL REVIEW.—Any State, political
17 subdivision of a State, or person aggrieved by a de-
18 termination of the Authority under this section may,
19 during the 60 day period beginning on the date on
20 which the determination was made, petition any
21 United States Court of Appeals in the circuit in
22 which the person resides or transacts business or in
23 the District of Columbia circuit, for judicial review.
24 In any judicial review of a determination by the Au-
25 thority, the procedures contained in subsections (c)

1 and (d) of section 7123 of title 5, United States
2 Code, shall be followed, except that any final deter-
3 mination of the Authority with respect to questions
4 of fact or law shall be found to be conclusive unless
5 the court determines that the Authority's decision
6 was arbitrary and capricious.

7 (b) RIGHTS AND RESPONSIBILITIES.—In making a
8 determination described in subsection (a), the Authority
9 shall consider whether State law provides rights and re-
10 sponsibilities comparable to or greater than the following:

11 (1) Granting public safety officers the right to
12 form and join a labor organization, which may ex-
13 clude management and supervisory employees, that
14 is, or seeks to be, recognized as the exclusive bar-
15 gaining representative of such employees.

16 (2) Requiring public safety employers to recog-
17 nize the employees' labor organization (freely chosen
18 by a majority of the employees), to agree to bargain
19 with the labor organization, and to commit any
20 agreements to writing in a contract or memorandum
21 of understanding.

22 (3) Permitting bargaining over hours, wages,
23 and terms and conditions of employment.

1 (4) Requiring an interest impasse resolution
2 mechanism, such as fact-finding, mediation, arbitra-
3 tion or comparable procedures.

4 (5) Requiring enforcement through State courts
5 of—

6 (A) all rights, responsibilities, and protec-
7 tions provided by State law and enumerated in
8 this section; and

9 (B) any written contract or memorandum
10 of understanding.

11 (c) FAILURE TO MEET REQUIREMENTS.—

12 (1) IN GENERAL.—If the Authority determines,
13 acting pursuant to its authority under subsection
14 (a), that a State does not substantially provide for
15 the rights and responsibilities described in sub-
16 section (b), such State shall be subject to the regula-
17 tions and procedures described in section 5.

18 (2) EFFECTIVE DATE.—Paragraph (1) shall
19 take effect on the date that is 2 years after the date
20 of enactment of this Act.

21 **SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.**

22 (a) IN GENERAL.—Not later than 1 year after the
23 date of enactment of this Act, the Authority shall issue
24 regulations in accordance with the rights and responsibil-
25 ities described in section 4(b) establishing collective bar-

1 gaining procedures for public safety employers and officers
2 in States which the Authority has determined, acting pur-
3 suant to its authority under section 4(a), do not substan-
4 tially provide for such rights and responsibilities.

5 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
6 THORITY.—The Authority, to the extent provided in this
7 Act and in accordance with regulations prescribed by the
8 Authority, shall—

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

11 (2) supervise or conduct elections to determine
12 whether a labor organization has been selected as an
13 exclusive representative by a majority of the employ-
14 ees in an appropriate unit;

15 (3) resolve issues relating to the duty to bar-
16 gain in good faith;

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

19 (5) resolve exceptions to the awards of arbitra-
20 tors;

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

1 (7) take such other actions as are necessary
2 and appropriate to effectively administer this Act,
3 including issuing subpoenas requiring the attendance
4 and testimony of witnesses and the production of
5 documentary or other evidence from any place in the
6 United States, and administering oaths, taking or
7 ordering the taking of depositions, ordering re-
8 sponses to written interrogatories, and receiving and
9 examining witnesses.

10 (c) ENFORCEMENT.—

11 (1) AUTHORITY TO PETITION COURT.—The Au-
12 thority may petition any United States Court of Ap-
13 peals with jurisdiction over the parties, or the
14 United States Court of Appeals for the District of
15 Columbia Circuit, to enforce any final orders under
16 this section, and for appropriate temporary relief or
17 a restraining order. Any petition under this section
18 shall be conducted in accordance with subsections
19 (c) and (d) of section 7123 of title 5, United States
20 Code, except that any final order of the Authority
21 with respect to questions of fact or law shall be
22 found to be conclusive unless the court determines
23 that the Authority’s decision was arbitrary and ca-
24 pricious.

1 (2) PRIVATE RIGHT OF ACTION.—Unless the
2 Authority has filed a petition for enforcement as
3 provided in paragraph (1), any party has the right
4 to file suit in a State court of competent jurisdiction
5 to enforce compliance with the regulations issued by
6 the Authority pursuant to subsection (b), and to en-
7 force compliance with any order issued by the Au-
8 thority pursuant to this section. The right provided
9 by this subsection to bring a suit to enforce compli-
10 ance with any order issued by the Authority pursu-
11 ant to this section shall terminate upon the filing of
12 a petition seeking the same relief by the Authority.

13 **SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.**

14 A public safety employer, officer, or labor organiza-
15 tion may not engage in a lockout, sickout, work slowdown,
16 or strike or engage in any other action that is designed
17 to compel an employer, officer, or labor organization to
18 agree to the terms of a proposed contract and that will
19 measurably disrupt the delivery of emergency services, ex-
20 cept that it shall not be a violation of this section for an
21 employer, officer, or labor organization to refuse to pro-
22 vide services not required by the terms and conditions of
23 an existing contract.

1 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**
2 **AGREEMENTS.**

3 A certification, recognition, election-held, collective
4 bargaining agreement or memorandum of understanding
5 which has been issued, approved, or ratified by any public
6 employee relations board or commission or by any State
7 or political subdivision or its agents (management offi-
8 cials) in effect on the day before the date of enactment
9 of this Act shall not be invalidated by the enactment of
10 this Act.

11 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

12 (a) CONSTRUCTION.—Nothing in this Act shall be
13 construed—

14 (1) to invalidate or limit the remedies, rights,
15 and procedures of any law of any State or political
16 subdivision of any State or jurisdiction that provides
17 collective bargaining rights for public safety officers
18 that are equal to or greater than the rights provided
19 under this Act;

20 (2) to prevent a State from enforcing a right-
21 to-work law that prohibits employers and labor orga-
22 nizations from negotiating provisions in a labor
23 agreement that require union membership or pay-
24 ment of union fees as a condition of employment;

25 (3) to invalidate any State law in effect on the
26 date of enactment of this Act that substantially pro-

1 vides for the rights and responsibilities described in
2 section 4(b) solely because such State law permits
3 an employee to appear on his or her own behalf with
4 respect to his or her employment relations with the
5 public safety agency involved;

6 (4) to permit parties subject to the National
7 Labor Relations Act (29 U.S.C. 151 et seq.) and the
8 regulations under such Act to negotiate provisions
9 that would prohibit an employee from engaging in
10 part-time employment or volunteer activities during
11 off-duty hours; or

12 (5) to prohibit a State from exempting from
13 coverage under this Act a political subdivision of the
14 State that has a population of less than 5,000 or
15 that employs less than 25 full time employees.

16 For purposes of paragraph (5), the term “employee” in-
17 cludes each and every individual employed by the political
18 subdivision except any individual elected by popular vote
19 or appointed to serve on a board or commission.

20 (b) COMPLIANCE.—No State shall preempt laws or
21 ordinances of any of its political subdivisions if such laws
22 provide collective bargaining rights for public safety offi-
23 cers that are equal to or greater than the rights provided
24 under this Act.

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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