

109TH CONGRESS
1ST SESSION

H. R. 1249

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2005

Mr. KILDEE (for himself, Mr. NEY, Mr. ALLEN, Mr. BERMAN, Mr. BONNER, Mr. CHANDLER, Mr. CONYERS, Mr. CROWLEY, Mr. DICKS, Mr. ENGLISH of Pennsylvania, Mr. FARR, Mr. GENE GREEN of Texas, Mr. GREEN of Wisconsin, Mr. GRIJALVA, Mr. HOLDEN, Mr. HOLT, Mr. INSLEE, Mr. KENNEDY of Minnesota, Mr. KING of New York, Mr. LARSEN of Washington, Ms. ZOE LOFGREN of California, Ms. MCCOLLUM of Minnesota, Mr. McDERMOTT, Mr. McHUGH, Mr. McNULTY, Mr. GEORGE MILLER of California, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. SABO, Mr. SHAYS, Mr. SHERMAN, Mr. SHIMKUS, Mr. SIMMONS, Ms. SLAUGHTER, Ms. SOLIS, Mrs. TAUSCHER, Mr. TIERNEY, Mr. VAN HOLLEN, Mr. WAXMAN, Mr. WELDON of Pennsylvania, Mr. WEXLER, Ms. WOOLSEY, Mr. PETERSON of Minnesota, Ms. WATSON, Mr. WEINER, Mrs. CHRISTENSEN, Mrs. JONES of Ohio, and Mr. KUHLMANN of New York) introduced the following bill; which was referred to the Committee on Education and the Workforce

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

5 Congress declares that the following is the policy of
6 the United States:

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

18 (2) The health and safety of the Nation and the
19 best interests of public safety employers and employ-
20 ees can be best protected by the settlement of issues
21 through the processes of collective bargaining.

22 (3) The Federal Government needs to encour-
23 age conciliation, mediation, and voluntary arbitra-
24 tion to aid and encourage employers and the rep-
25 resentatives of their employees to reach and main-
26 tain agreements concerning rates of pay, hours, and

1 working conditions, and to make all reasonable ef-
2 forts through negotiations to settle their differences
3 by mutual agreement reached through collective bar-
4 gaining or by such methods as may be provided for
5 in any applicable agreement for the settlement of
6 disputes.

7 (4) The absence of adequate cooperation be-
8 tween public safety employers and employees has im-
9 plications for the security of employees and can af-
10 fect interstate and intrastate commerce. Addition-
11 ally, the lack of such labor-management cooperation
12 detrimentally impacts the upgrading of police and
13 fire services of local communities, the health and
14 well-being of public safety officers, and the morale of
15 the fire and police departments. These factors could
16 have significant commercial repercussions. Moreover,
17 providing minimal standards for collective bar-
18 gaining negotiations in the public safety sector will
19 prevent industrial strife between labor and manage-
20 ment that interferes with the normal flow of com-
21 merce.

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

24 (1) The term “Authority” means the Federal
25 Labor Relations Authority.

1 (2) The term “public safety officer”—

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

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

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

11 (3) The term “firefighter” has the same mean-
12 ing given the term “employee engaged in fire protec-
13 tion activities” defined in section 3 of the Fair
14 Labor Standards Act (29 U.S.C. 203(y)).

15 (4) The term “emergency medical services per-
16 sonnel” means an individual who provides out-of-
17 hospital emergency medical care, including an emer-
18 gency medical technician, paramedic, or first re-
19 sponder.

20 (5) The term “law enforcement officer” has the
21 same meaning given such term in section 1204(5) of
22 the Omnibus Crime Control and Safe Streets Act of
23 1968 (42 U.S.C. 3796b(5)).

24 (6) The term “supervisory employee” has the
25 meaning given such term under applicable State law

1 in effect on the date of enactment of this Act. If no
2 such State law is in effect, the term means an indi-
3 vidual, employed by a public safety employer, who—

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

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

15 (7) The term “management employee” has the
16 meaning given such term under applicable State law
17 in effect on the date of enactment of this Act. If no
18 such State law is in effect, the term means an indi-
19 vidual employed by a public safety employer in a po-
20 sition that requires or authorizes the individual to
21 formulate, determine, or influence the policies of the
22 employer.

23 (8) The terms “employer” and “public safety
24 agency” mean any State, political subdivision of a
25 State, the District of Columbia, or any territory or

1 possession of the United States that employs public
2 safety officers.

3 (9) The term “labor organization” means an
4 organization composed in whole or in part of em-
5 ployees, in which employees participate, and which
6 represents such employees before public safety agen-
7 cies concerning grievances, conditions of employment
8 and related matters.

9 (10) The term “substantially provides” means
10 compliance with the essential requirements of this
11 Act, specifically, the right to form and join a labor
12 organization, the right to bargain over wages, hours
13 and conditions of employment, the right to sign an
14 enforceable contract, and availability of some form
15 of mechanism to break an impasse, such as arbitra-
16 tion, mediation, or fact finding.

17 **SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBIL-**
18 **ITIES.**

19 (a) DETERMINATION.—

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

1 weight, to the maximum extent practicable, to the
2 opinion of affected employee organizations.

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

8 (B) Upon establishing that a material change in
9 State law or its interpretation has occurred, an em-
10 ployer or a labor organization may submit a written
11 request for a subsequent determination. If satisfied
12 that a material change in State law or its interpreta-
13 tion has occurred, the Director shall issue a subse-
14 quent determination not later than 30 days after re-
15 ceipt of such request.

16 (3) JUDICIAL REVIEW.—Any person aggrieved
17 by a determination of the Authority under this sec-
18 tion may, during the 60-day period beginning on the
19 date on which the determination was made, petition
20 any United States Court of Appeals in the circuit in
21 which the person resides or transacts business or in
22 District of Columbia circuit, for judicial review. In
23 any judicial review of a determination by the Au-
24 thority, the procedures contained in section 7123(c)
25 and (d) of title 5, United States Code, shall be fol-

1 lowed, except that any final determination of the Au-
2 thority with respect to questions of fact or law shall
3 be found to be conclusive unless the court deter-
4 mines that the Authority's decision was arbitrary
5 and capricious.

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

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

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

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

23 (4) Requiring an interest impasse resolution
24 mechanism, such as fact-finding, mediation, arbitra-
25 tion or comparable procedures.

1 (5) Requiring enforcement through State courts
2 of—

3 (A) all rights, responsibilities, and protec-
4 tions provided by State law and enumerated in
5 this section; and

6 (B) any written contract or memorandum
7 of understanding.

8 (c) FAILURE TO MEET REQUIREMENTS.—

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

15 (2) EFFECTIVE DATE.—Paragraph (1) shall
16 take effect on the date that is 2 years after the date
17 of enactment of this Act.

18 **SEC. 5. ROLE OF FLRA AUTHORITY.**

19 (a) IN GENERAL.—Not later than one year after the
20 date of the enactment of this Act, the Authority shall issue
21 regulations in accordance with the rights and responsibil-
22 ities described in section 4(b) establishing collective bar-
23 gaining procedures for public safety employers and officers
24 in States which the Authority has determined, acting pur-

1 suant to its authority under section 4(a), do not substan-
2 tially provide for such rights and responsibilities.

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

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

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

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

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

17 (5) resolve exceptions to the awards of arbitra-
18 tors; and

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

24 (7) take such other actions as are necessary
25 and appropriate to effectively administer this Act,

1 including issuing subpoenas requiring the attendance
2 and testimony of witnesses and the production of
3 documentary or other evidence from any place in the
4 United States, and administering oaths, taking or
5 ordering the taking of depositions, ordering re-
6 sponses to written interrogatories, and receiving and
7 examining witnesses.

8 (c) ENFORCEMENT.—

9 (1) The Authority may petition any United
10 States Court of Appeals with jurisdiction over the
11 parties or the United States Court of Appeals for
12 the District of Columbia Circuit to enforce any final
13 orders under this section, and for appropriate tem-
14 porary relief or a restraining order. Any petition
15 under this section shall be conducted in accordance
16 with section 7123(c) and (d) of title 5, United
17 States Code, except that any final order of the Au-
18 thority with respect to questions of fact or law shall
19 be found to be conclusive unless the court deter-
20 mines that the Authority's decision was arbitrary
21 and capricious.

22 (2) Unless the Authority has filed a petition for
23 enforcement as provided in paragraph (1), any party
24 has the right to file suit in a State court of com-
25 petent jurisdiction to enforce compliance with the

1 regulations issued by the Authority pursuant to sub-
2 section (b), and to enforce compliance with any
3 order issued by the Authority pursuant to this sec-
4 tion. The right provided by this subsection to bring
5 a suit to enforce compliance with any order issued
6 by the Authority pursuant to this section shall ter-
7minate upon the filing of a petition seeking the same
8 relief by the Authority.

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

10 A public safety employer, officer, or labor organiza-
11tion may not engage in a lockout or strike.

12 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**
13 **AGREEMENTS.**

14 A certification, recognition, election-held, collective
15 bargaining agreement or memorandum of understanding
16 which has been issued, approved, or ratified by any public
17 employee relations board or commission or by any State
18 or political subdivision or its agents (management offi-
19cials) in effect on the day before the date of enactment
20 of this Act shall not be invalidated by the enactment of
21 this Act.

22 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

23 (a) CONSTRUCTION.—Nothing in this Act shall be
24 construed—

1 (1) to invalidate or limit the remedies, rights,
2 and procedures of any law of any State or political
3 subdivision of any State or jurisdiction that provides
4 greater or equal collective bargaining rights for pub-
5 lic safety officers;

6 (2) to prevent a State from enforcing a State
7 law which prohibits employers and labor organiza-
8 tions from negotiating provisions in a labor agree-
9 ment that require union membership or payment of
10 union fees as a condition of employment;

11 (3) to invalidate any State law in effect on the
12 date of enactment of this Act that substantially pro-
13 vides for the rights and responsibilities described in
14 section 4(b) solely because such State law permits
15 an employee to appear in his or her own behalf with
16 respect to his or her employment relations with the
17 public safety agency involved; or

18 (4) to allow parties subject to FLRA regula-
19 tions promulgated under this Act to negotiate provi-
20 sions that would prohibit an employee from engaging
21 in part-time employment or volunteer activities dur-
22 ing off-duty hours; or

23 (5) to prohibit a State from exempting from
24 coverage under this Act a political subdivision of the

1 State that has a population of less than 5,000 or
2 that employs less than 25 full time employees.
3 For purposes of paragraph (5), the term “employees” in-
4 cludes each individual employed by the political subdivi-
5 sion except any individual elected by popular vote or ap-
6 pointed to serve on a board or commission.

7 (b) COMPLIANCE.—

8 (1) ACTIONS OF STATES.—Nothing in this Act
9 shall be construed to require a State to rescind or
10 preempt laws or ordinances of any of its political
11 subdivisions if such laws provide collective bar-
12 gaining rights for public safety officers that are
13 comparable to or greater than the rights provided
14 under this Act.

15 (2) ACTIONS OF THE AUTHORITY.—Nothing in
16 this Act shall be construed to require that the Au-
17 thority preempt the laws or ordinances of any polit-
18 ical subdivision of a State if such laws provide col-
19 lective bargaining rights for public safety officers
20 that are comparable to or greater than the rights
21 provided 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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