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H. R. 6445

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2018

Mr. FITZPATRICK (for himself, Mr. JOYCE of Ohio, Mr. DONOVAN, Mr. SMITH of New Jersey, and Mr. MCKINLEY) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, and for other purposes.

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 Employee Free-
5 dom to Negotiate Act of 2018”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act to—

1 (1) secure the rights of public employees to
2 form or join unions, act concertedly for the purpose
3 of collective bargaining or other mutual aid or pro-
4 tection, and bargain collectively with their employ-
5 ers; and

6 (2) reaffirm the policy of the United States to
7 encourage the practice and procedure of collective
8 bargaining, which safeguards the public interest and
9 promotes the free and unobstructed flow of com-
10 merce.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

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

15 (2) **COLLECTIVE BARGAINING.**—The term “col-
16 lective bargaining”, with respect to public employees
17 and public employers, means the performance of the
18 mutual obligation of the representative of a public
19 employer and the exclusive representative of public
20 employees in an appropriate unit of the employer to
21 meet at reasonable times and to consult and bargain
22 in a good-faith effort to reach agreement with re-
23 spect to wages, hours, and other terms and condi-
24 tions of employment affecting such employees and to
25 execute, if requested by either party, a written docu-

1 ment incorporating any collective bargaining agree-
2 ment reached, but the obligation referred to in this
3 paragraph does not compel either party to agree to
4 a proposal or to make a concession.

5 (3) CONFIDENTIAL EMPLOYEE.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), the term “confidential em-
8 ployee” means a public employee who acts in a
9 confidential capacity with respect to an indi-
10 vidual who formulates or effectuates manage-
11 ment policies in the field of labor-management
12 relations.

13 (B) STATE LAW.—If the term “confiden-
14 tial employee”, or a substantially equivalent
15 term, has a substantially equivalent meaning
16 under applicable State law to the meaning
17 under subparagraph (A) on the date of the en-
18 actment of this Act, such term, or substantially
19 equivalent term, and meaning under such appli-
20 cable State law shall apply with respect to the
21 term “confidential employee” under this Act for
22 public employees and public employers in such
23 State.

24 (4) EMERGENCY SERVICES EMPLOYEE.—The
25 term “emergency services employee” means—

1 (A) a public employee providing out-of-hos-
2 pital emergency medical care, including an
3 emergency medical technician, paramedic, or
4 first responder; or

5 (B) a public employee providing other serv-
6 ices in response to emergencies that have the
7 potential to cause death or serious bodily in-
8 jury, including an employee in fire protection
9 activities (as defined in section 3 of the Fair
10 Labor Standards Act of 1938 (29 U.S.C. 203)).

11 (5) EMPLOY.—The term “employ” includes to
12 suffer or permit to work.

13 (6) LABOR ORGANIZATION.—The term “labor
14 organization”, with respect to public employers and
15 public employees, means any organization of any
16 kind in which public employees participate and
17 which exists for the purpose, in whole or in part, of
18 dealing with public employers concerning grievances,
19 labor disputes, wages, rates of pay, hours of employ-
20 ment, or conditions of work.

21 (7) LAW ENFORCEMENT OFFICER.—The term
22 “law enforcement officer” has the meaning given
23 such term in section 1204 of the Omnibus Crime
24 Control and Safe Streets Act of 1968 (34 U.S.C.
25 10284).

1 (8) MANAGEMENT EMPLOYEE.—

2 (A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term “management em-
4 ployee” means an individual employed by a pub-
5 lic employer in a position the duties and respon-
6 sibilities of which require or authorize the indi-
7 vidual to formulate, determine, or influence the
8 policies of the employer.

9 (B) STATE LAW.—If the term “manage-
10 ment employee”, or a substantially equivalent
11 term, has a substantially equivalent meaning
12 under applicable State law to the meaning
13 under subparagraph (A) on the date of the en-
14 actment of this Act, such term, or substantially
15 equivalent term, and meaning under such appli-
16 cable State law shall apply with respect to the
17 term “management employee” under this Act
18 for public employees and public employers in
19 such State.

20 (9) PERSON.—The term “person” means an in-
21 dividual or a labor organization.

22 (10) PUBLIC EMPLOYEE.—The term “public
23 employee”—

24 (A) means a person, employed by a public
25 employer, who in any workweek is engaged in

1 commerce or in the production of goods for
2 commerce, or is employed in an enterprise en-
3 gaged in commerce or in the production of
4 goods for commerce (as the terms “commerce”,
5 “goods”, and “enterprise engaged in commerce
6 or in the production of goods for commerce”
7 are defined in section 3 of the Fair Labor
8 Standards Act of 1938);

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

12 (C) does not include a permanent super-
13 visory employee, permanent management em-
14 ployee, or permanent confidential employee, or
15 an elected official.

16 (11) PUBLIC EMPLOYER.—The term “em-
17 ployer” means any of the following that employs
18 public employees:

19 (A) A State or the political subdivision of
20 a State, including a territory or political sub-
21 division of a territory.

22 (B) Any authority, agency, school district,
23 board or other entity controlled and operated by
24 an entity described in subparagraph (A).

1 (12) STATE.—The term “State” means each of
2 the several States of the United States, the District
3 of Columbia, and any territory or possession of the
4 United States.

5 (13) SUBSTANTIALLY PROVIDES.—The term
6 “substantially provide” or “substantially provides”,
7 with respect to the rights and responsibilities de-
8 scribed in section 4(b), means providing rights and
9 responsibilities that are comparable to or greater
10 than each of the rights and responsibilities described
11 in such section.

12 (14) SUPERVISORY EMPLOYEE.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), the term “supervisory em-
15 ployee” means an individual, employed by a
16 public employer, who—

17 (i) has the authority in the interest of
18 the employer, if the exercise of the author-
19 ity is not merely routine or clerical in na-
20 ture but requires the consistent exercise of
21 independent judgment, to—

22 (I) hire, promote, reward, trans-
23 fer, furlough, lay off, recall, suspend,
24 discipline, or remove public employees;

1 (II) adjust the grievances of pub-
 2 lic employees; or

3 (III) effectively recommend any
 4 action described in subclause (I) or
 5 (II); and

6 (ii) devotes a majority of time at work
 7 to exercising the authority under clause (i).

8 (B) STATE LAW.—If the term “supervisory
 9 employee”, or a substantially equivalent term,
 10 has a substantially equivalent meaning under
 11 applicable State law to the meaning under sub-
 12 paragraph (A) on the date of the enactment of
 13 this Act, such term, or substantially equivalent
 14 term, and meaning under such applicable State
 15 law shall apply with respect to the term “super-
 16 visory employee” under this Act for public em-
 17 ployees and public employers in such State.

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

20 (a) DETERMINATION.—

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

1 (2) CONSIDERATION OF ADDITIONAL OPIN-
2 IONS.—In making the determination described in
3 paragraph (1), the Authority shall consider the opin-
4 ions of affected public employees, labor organiza-
5 tions, and public employers. In the case where the
6 Authority is notified by an affected public employer
7 and labor organization that both parties agree that
8 the law applicable to such employer and labor orga-
9 nization substantially provides for the rights and re-
10 sponsibilities described in subsection (b), the Author-
11 ity shall give such agreement weight to the max-
12 imum extent practicable in making the Authority's
13 determination described in paragraph (1).

14 (3) LIMITED CRITERIA.—In making the deter-
15 mination described in paragraph (1), the Authority
16 shall be limited to the application of the criteria de-
17 scribed in subsection (b) and shall not require any
18 additional criteria.

19 (4) SUBSEQUENT DETERMINATIONS.—

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

1 (B) PROCEDURES FOR SUBSEQUENT DE-
2 TERMINATIONS.—Upon establishing that a ma-
3 terial change in State law or its interpretation
4 has occurred, a public employee, public em-
5 ployer, or a labor organization may submit a
6 written request for a subsequent determination.
7 If satisfied that a material change in State law
8 or its interpretation has occurred, the Authority
9 shall issue a subsequent determination not later
10 than 30 days after receipt of such request.

11 (5) JUDICIAL REVIEW.—Any person or public
12 employer aggrieved by a determination of the Au-
13 thority under this section may, during the 60-day
14 period beginning on the date on which the deter-
15 mination was made, petition any United States
16 Court of Appeals in the circuit in which the person
17 or public employer resides or transacts business or
18 in the Court of Appeals for the District of Columbia
19 Circuit, for judicial review. In any judicial review of
20 a determination made by the Authority described in
21 paragraph (1), the procedures contained in sub-
22 sections (c) and (d) of section 7123 of title 5,
23 United States Code, shall be followed.

1 (b) RIGHTS AND RESPONSIBILITIES.—The rights and
2 responsibilities described in this section are each of the
3 following:

4 (1) Granting public employees the right to self-
5 organization, to form, join, or assist a labor organi-
6 zation, to bargain collectively through representa-
7 tives of their own choosing, and to engage in other
8 concerted activities for the purpose of collective bar-
9 gaining or other mutual aid or protection.

10 (2) Requiring public employers to—

11 (A) recognize the labor organization of its
12 public employees (freely chosen in an election
13 by a majority of such employees voting in the
14 appropriate unit), without requiring an election
15 to recertify a labor organization that is already
16 recognized as the representative of such employ-
17 ees unless not less than 30 percent of such em-
18 ployees in the appropriate unit freely sign a pe-
19 tition to decertify such labor organization;

20 (B) collectively bargain with such recog-
21 nized labor organization; and

22 (C) commit any agreements with such rec-
23 ognized labor organization to writing in a con-
24 tract or memorandum of understanding.

1 (3) Making available an interest impasse resolu-
2 tion mechanism, such as fact-finding, mediation, ar-
3 bitration, or comparable procedures and providing
4 for the payroll deduction of labor organization fees
5 to any duly-selected representative of public employ-
6 ees pursuant to the terms of an authorization exe-
7 cuted by such public employees.

8 (4) Requiring enforcement of all rights, respon-
9 sibilities, and protections provided by State law and
10 enumerated in this section, and of any written con-
11 tract or memorandum of understanding between a
12 labor organization and a public employer, through—

13 (A) a State administrative agency, if the
14 State so chooses;

15 (B) at the election of an aggrieved party,
16 the State courts; or

17 (C) in the case of an alleged violation, mis-
18 interpretation, or misapplication of the contract
19 or memorandum of understanding, a grievance
20 resolution procedure negotiated in such contract
21 or memorandum.

22 (c) COMPLIANCE WITH REQUIREMENTS.—If the Au-
23 thority determines, acting pursuant to its authority under
24 subsection (a), that a State substantially provides for the

1 rights and responsibilities described in subsection (b), then
2 subsection (d) shall not apply.

3 (d) FAILURE TO MEET REQUIREMENTS.—

4 (1) IN GENERAL.—If the Authority determines,
5 acting pursuant to its authority under subsection
6 (a), that a State does not substantially provide for
7 the rights and responsibilities described in sub-
8 section (b), then such State shall be subject to the
9 regulations and procedures described in section 5 be-
10 ginning on the later of—

11 (A) the date that is 2 years after the date
12 of enactment of this Act;

13 (B) the date that is the last day of the
14 first regular session of the legislature of the
15 State that begins after the date of the enact-
16 ment of this Act; or

17 (C) in the case of a State receiving a sub-
18 sequent determination under subsection (a)(4),
19 the date that is the last day of the first regular
20 session of the legislature of the State that be-
21 gins after the date the Authority made the de-
22 termination.

23 (2) PARTIAL FAILURE.—If the Authority makes
24 a determination that a State does not substantially
25 provide for the rights and responsibilities described

1 in subsection (b) solely because the State law sub-
2 stantially provides for such rights and responsibil-
3 ities for certain categories of public employees but
4 not others, the Authority shall identify—

5 (A) those categories of public employees
6 that shall be subject to the regulations and pro-
7 cedures described in section 5, pursuant to sec-
8 tion 8(b)(3), beginning on the applicable date
9 under paragraph (1); and

10 (B) those categories of public employees
11 that shall not be subject to the regulations and
12 procedures described in section 5.

13 **SEC. 5. MINIMUM STANDARDS ADMINISTERED BY THE FED-**
14 **ERAL LABOR RELATIONS AUTHORITY.**

15 (a) IN GENERAL.—Not later than 1 year after the
16 date of enactment of this Act, the Authority shall issue
17 regulations in accordance with the rights and responsibil-
18 ities described in section 4(b) establishing collective bar-
19 gaining procedures for public employers, labor organiza-
20 tions, and public employees in States which the Authority
21 has determined, acting pursuant to section 4(a), do not
22 substantially provide for such rights and responsibilities.

23 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
24 THORITY.—The Authority, to the extent provided in this

1 Act and in accordance with regulations prescribed by the
2 Authority, shall—

3 (1) protect the right of public employees to
4 form, join, or assist any labor organization, or to re-
5 frain from any such activity, freely and without fear
6 of penalty or reprisal, protect the right of public em-
7 ployees to bargain collectively through representa-
8 tives of their own choosing, and protect the right of
9 public employees to engage in other concerted activi-
10 ties for the purpose of collective bargaining or other
11 mutual aid or protection;

12 (2) supervise or conduct elections to determine
13 whether a labor organization has been selected as an
14 exclusive representative by a majority of the public
15 employees voting in such election in an appropriate
16 unit, and provide for the payroll deduction of labor
17 organization fees to any such duly-elected exclusive
18 representative pursuant to the terms of an author-
19 ization executed by a public employee;

20 (3) determine the appropriateness of units for
21 labor organization representation;

22 (4) require public employers to—

23 (A) recognize the labor organization of its
24 public employees (freely chosen by a majority of
25 such employees voting in the appropriate unit)

1 as the exclusive representative of such employ-
2 ees;

3 (B) bargain in good faith with such labor
4 organization concerning public employees' terms
5 and conditions of employment, which shall in-
6 clude a procedure for the settlement of griev-
7 ances culminating in binding arbitration in any
8 agreement and a procedure for resolving any
9 impasses in collective bargaining; and

10 (C) commit any agreements to writing in a
11 contract or memorandum of understanding;

12 (5) prohibit practices which interfere with, co-
13 erce, or intimidate public employees in the exercise
14 of rights guaranteed in paragraph (1) or regulations
15 issued thereunder;

16 (6) conduct hearings and resolve complaints
17 concerning violations of any regulation or order
18 issued by the Authority pursuant to this Act;

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

21 (8) take such other actions as are necessary
22 and appropriate to effectively administer this Act,
23 including issuing subpoenas requiring the attendance
24 and testimony of witnesses and the production of
25 documentary or other evidence from any place in the

1 United States, administering oaths, taking or order-
2 ing the taking of depositions, ordering responses to
3 written interrogatories, and receiving and examining
4 witnesses.

5 (c) ENFORCEMENT.—The Authority may issue an
6 order directing compliance by any person or public em-
7 ployer found to be in violation of this section, and may
8 petition any United States Court of Appeals with jurisdic-
9 tion over the parties, or the United States Court of Ap-
10 peals for the District of Columbia Circuit, to enforce any
11 such final orders issued pursuant to this section or pursu-
12 ant to regulations issued under this section, and for appro-
13 priate temporary relief or a restraining order. Any petition
14 under this section shall be conducted in accordance with
15 subsections (c) and (d) of section 7123 of title 5, United
16 States Code.

17 **SEC. 6. LOCKOUTS AND EMPLOYEE STRIKES PROHIBITED**
18 **WHEN EMERGENCY OR PUBLIC SAFETY SERV-**
19 **ICES IMPERILED.**

20 (a) IN GENERAL.—Subject to subsection (b), any em-
21 ployer, emergency services employee, or law enforcement
22 officer to which section 5 applies may not engage in a lock-
23 out, strike, or any other organized job action of which a
24 reasonably probable result is a measurable disruption of
25 the delivery of emergency or public safety services. No

1 labor organization may cause or attempt to cause a viola-
 2 tion of this subsection.

3 (b) NO PREEMPTION.—Nothing in this section shall
 4 be construed to preempt any law of any State or political
 5 subdivision of any State with respect to strikes by emer-
 6 gency services employees or law enforcement officers.

7 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**
 8 **AGREEMENTS.**

9 The enactment of this Act shall not invalidate any
 10 certification, recognition, result of an election, collective
 11 bargaining agreement, or memorandum of understanding
 12 that—

13 (1) has been issued, approved, or ratified by
 14 any public employee relations board or commission,
 15 or by any State or political subdivision or an agent
 16 or management official of such State or political
 17 subdivision; and

18 (2) is in effect on the day before the date of en-
 19 actment of this Act.

20 **SEC. 8. EXCEPTIONS.**

21 (a) IN GENERAL.—Section 4(d), and the regulations
 22 and procedures under section 5, shall not apply—

23 (1) solely because a State law permits a public
 24 employee to appear on the employee's own behalf

1 with respect to the employee's employment relations
2 with the public employer involved;

3 (2) solely because a State law excludes from its
4 coverage public employees of a State militia or na-
5 tional guard; or

6 (3) to a political subdivision of a State if—

7 (A) such political subdivision has a popu-
8 lation of fewer than 5,000 people or employs
9 fewer than 25 public employees; and

10 (B) the State in which such political sub-
11 division is located notifies the Authority of the
12 State's request that such political subdivision be
13 exempt from such sections.

14 (b) COMPLIANCE.—

15 (1) ACTIONS OF STATES.—Nothing in this Act
16 or the regulations promulgated under this Act shall
17 be construed to require a State to rescind or pre-
18 empt the laws or ordinances of any political subdivi-
19 sion of the State if such laws or ordinances provide
20 rights and responsibilities for public employees that
21 are comparable to or greater than the rights and re-
22 sponsibilities described in section 4(b).

23 (2) ACTIONS OF THE DISTRICT OF COLUM-
24 BIA.—Nothing in this Act or the regulations promul-
25 gated under this Act shall be construed—

1 (A) to require the District of Columbia to
2 rescind—

3 (i) section 501 of the District of Co-
4 lumbia Government Comprehensive Merit
5 Personnel Act (1–605.01, D.C. Official
6 Code), establishing the Public Employee
7 Relations Board of the District of Colum-
8 bia; or

9 (ii) section 502 of such Act (1–
10 605.02, D.C. Official Code), establishing
11 the power of the Board;

12 (B) to preempt the laws described in sub-
13 paragraph (A); or

14 (C) to limit or alter the powers of the gov-
15 ernment of the District of Columbia pursuant
16 to the District of Columbia Home Rule Act.

17 (3) ACTIONS OF THE AUTHORITY.—Nothing in
18 this Act or the regulations promulgated under this
19 Act shall be construed to preempt—

20 (A) the laws or ordinances of any State or
21 political subdivision of a State, if such laws or
22 ordinances provide collective bargaining rights
23 for public employees that are comparable to or
24 greater than the rights enumerated in section
25 4(b);

1 (B) the laws or ordinances of any State or
2 political subdivision of a State that substan-
3 tially provide for the rights and responsibilities
4 described in section 4(b) with respect to certain
5 categories of public employees solely because
6 such rights and responsibilities have not been
7 extended to other categories of public employees
8 covered by this Act;

9 (C) the laws or ordinances of any State or
10 political subdivision of a State that substan-
11 tially provide for the rights and responsibilities
12 described in section 4(b), solely because such
13 laws or ordinances provide that a contract or
14 memorandum of understanding between a pub-
15 lic employer and a labor organization must be
16 presented to a legislative body as part of the
17 process for approving such contract or memo-
18 randum of understanding; or

19 (D) the laws or ordinances of any State or
20 political subdivision of a State that permit or
21 require a public employer to recognize a labor
22 organization on the basis of signed authoriza-
23 tions executed by employees designating the
24 labor organization as their representative.

1 (4) LIMITED ENFORCEMENT POWER.—In the
2 case of a law described in subsection (d)(2), the Au-
3 thority shall only exercise the powers provided in
4 section 5 with respect to those categories of public
5 employees for whom the State does not substantially
6 provide the rights and responsibilities described in
7 section 4(b).

8 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

○