

111TH CONGRESS
1ST SESSION

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.

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 2009”.

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

7 Congress finds the following:

8 (1) Labor-management relationships and part-
9 nerships are based on trust, mutual respect, open
10 communication, bilateral consensual problem solving,

1 and shared accountability. In many public safety
2 agencies it is the union that provides the institu-
3 tional stability as elected leaders and appointees
4 come and go.

5 (2) State and local public safety officers play an
6 essential role in the efforts of the United States to
7 detect, prevent, and respond to terrorist attacks, and
8 to respond to natural disasters, hazardous materials,
9 and other mass casualty incidents. As the first to ar-
10 rive on scene, State and local public safety officers
11 must be prepared to protect life and property and to
12 preserve scarce and vital Federal resources, avoid
13 substantial and debilitating interference with inter-
14 state and foreign commerce, and to protect the na-
15 tional security of the United States. Public safety
16 employer-employee cooperation is essential in meet-
17 ing these needs and is, therefore, in the National in-
18 terest.

19 (3) The health and safety of the Nation and the
20 best interests of public safety employers and employ-
21 ees may be furthered by the settlement of issues
22 through the processes of collective bargaining.

23 (4) The Federal Government is in the position
24 to encourage conciliation, mediation, and voluntary
25 arbitration to aid and encourage employers and the

1 representatives of their employees to reach and
2 maintain agreements concerning rates of pay, hours,
3 and working conditions, and to make all reasonable
4 efforts through negotiations to settle their dif-
5 ferences by mutual agreement reached through col-
6 lective bargaining or by such methods as may be
7 provided for in any applicable agreement for the set-
8 tlement of disputes.

9 (5) The potential absence of adequate coopera-
10 tion between public safety employers and employees
11 has implications for the security of employees, im-
12 pacts the upgrading of police and fire services of
13 local communities, the health and well-being of pub-
14 lic safety officers, and the morale of the fire and po-
15 lice departments, and can affect interstate and
16 intrastate commerce.

17 (6) Many States and localities already provide
18 public safety officers with collective bargaining
19 rights comparable to or greater than the rights and
20 responsibilities set forth in this Act, and such State
21 laws should be respected.

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 in fire protection ac-
13 tivities” defined in section 3 of the Fair Labor
14 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, or a substantially equiva-

1 lent term, under applicable State law on the date of
2 enactment of this Act. In the absence of such State
3 law on the date of enactment of this Act, the term
4 means an individual, employed by a public safety
5 employer, who—

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

15 (B) devotes a preponderance of employ-
16 ment time exercising such authority.

17 (7) The term “management employee” has the
18 meaning given such term, or a substantially equiva-
19 lent term, under applicable State law in effect on the
20 date of enactment of this Act. If no such State law
21 is in effect, the term means an individual employed
22 by a public safety employer in a position that re-
23 quires or authorizes the individual to formulate, de-
24 termine, or influence the policies of the employer.

1 (8) The terms “employer” and “public safety
2 agency” mean any State, political subdivision of a
3 State, the District of Columbia, or any territory or
4 possession of the United States that employs public
5 safety officers.

6 (9) The term “labor organization” means an
7 organization composed in whole or in part of em-
8 ployees, in which employees participate, and the pur-
9 pose of which is to represent such employees before
10 public safety agencies concerning grievances, condi-
11 tions of employment and related matters.

12 (10) The term “substantially provides” means
13 substantial compliance with the rights and respon-
14 sibilities described in section 4(b).

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

17 (a) DETERMINATION.—

18 (1) IN GENERAL.—Not later than 180 days
19 after the date of enactment of this Act, the Author-
20 ity shall make a determination as to whether a State
21 substantially provides for the rights and responsibil-
22 ities described in subsection (b). In making such de-
23 terminations, the Authority shall consider the opin-
24 ion of affected employers and labor organizations.
25 Where the Authority is notified by an employer and

1 an affected labor organization that both parties
2 agree that the law applicable to such employer and
3 labor organization substantially provides for the
4 rights and responsibilities described in subsection
5 (b), the Authority shall give such agreement weight
6 to the maximum extent practicable in making its de-
7 termination under this subsection.

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

13 (B) An employer or a labor organization may
14 submit a written request for a subsequent deter-
15 mination, on the basis of a material change in State
16 law or its interpretation. If the Authority determines
17 that a material change in State law or its interpreta-
18 tion has occurred, the Authority shall issue a subse-
19 quent determination not later than 30 days after re-
20 ceipt of such request.

21 (3) JUDICIAL REVIEW.—Any person aggrieved
22 by a determination of the Authority under this sec-
23 tion may, during the 60-day period beginning on the
24 date on which the determination was made, petition
25 any United States Court of Appeals in the circuit in

1 which the person resides or transacts business or in
2 District of Columbia circuit, for judicial review. In
3 any judicial review of a determination by the Au-
4 thority, the procedures contained in section 7123(c)
5 of title 5, United States Code, shall be followed.

6 (b) RIGHTS AND RESPONSIBILITIES.—In making a
7 determination described in subsection (a), the Authority
8 shall consider a State’s law to provide adequate rights and
9 responsibilities unless such law fails to substantially pro-
10 vide rights and responsibilities comparable to or greater
11 than each of the following:

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

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

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

1 (4) Making available an interest impasse resolu-
2 tion mechanism, such as fact-finding, mediation, ar-
3 bitration, 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 subsection; 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 apply in each State on the later of—

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

22 (B) the date of the end of the first regular
23 session of the legislature of that State that be-
24 gins after the date of the enactment of this Act.

1 **SEC. 5. ROLE OF THE AUTHORITY.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of the enactment of this Act, the Authority shall issue
4 regulations establishing procedures which provide the
5 rights and responsibilities described in section 4(b) for
6 public safety employers and officers in States which the
7 Authority has determined, acting pursuant to its authority
8 under section 4(a), do not substantially provide for such
9 rights and responsibilities.

10 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
11 THORITY.—The Authority, to the extent provided in this
12 Act and in accordance with regulations prescribed by the
13 Authority, shall—

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

16 (2) supervise and conduct elections to deter-
17 mine whether a labor organization has been selected
18 as an exclusive representative by a voting majority
19 of the employees in an appropriate unit;

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

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

24 (5) resolve exceptions to the awards of arbitra-
25 tors;

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

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

10 (8) take such other actions as are necessary
11 and appropriate to effectively administer this Act,
12 including issuing subpoenas requiring the attendance
13 and testimony of witnesses and the production of
14 documentary or other evidence from any place in the
15 United States, and administering oaths, taking or
16 ordering the taking of depositions, ordering re-
17 sponses to written interrogatories, and receiving and
18 examining witnesses.

19 (c) ENFORCEMENT.—

20 (1) PETITION BY AUTHORITY.—If a State fails
21 to comply with a final order issued by the Authority,
22 the Authority shall petition any United States Court
23 of Appeals with jurisdiction over the parties or the
24 United States Court of Appeals for the District of
25 Columbia Circuit to enforce any final orders under

1 this section, and for appropriate temporary relief or
2 a restraining order. Any petition under this section
3 shall be conducted in accordance with section
4 7123(e) and (d) of title 5, United States Code, ex-
5 cept that any final order of the Authority with re-
6 spect to questions of fact shall be found to be con-
7 clusive unless the court determines that the
8 Authority's decision was arbitrary and capricious.

9 (2) RIGHT OF ACTION.—Unless the Authority
10 has filed a petition for enforcement as provided in
11 paragraph (1), any interested party shall have the
12 right to file suit against any political subdivision of
13 a State, or, if the State has waived its sovereign im-
14 munity, against the State itself, in any district court
15 of the United States of competent jurisdiction to en-
16 force compliance with the regulations issued by the
17 Authority pursuant to subsection (b), to enforce
18 compliance with any order issued by the Authority
19 pursuant to this section, or to enforce section 6 of
20 this Act. The right provided by this paragraph to
21 bring a suit to enforce compliance with any order
22 issued by the Authority pursuant to this section
23 shall terminate upon the filing of a petition seeking
24 the same relief by the Authority under paragraph
25 (1).

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

2 Notwithstanding any rights or responsibilities pro-
3 vided under State law or under regulations issued by the
4 Authority under section 5—

5 (1) a public safety employer may not engage in
6 a lockout of public safety officers;

7 (2) public safety officers may not engage in a
8 strike against such public safety employer; and

9 (3) a labor organization may not call for a
10 strike by public safety officers against their public
11 safety employer.

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

14 This Act and the regulations issued under this Act
15 shall not be construed to invalidate a certification, recogni-
16 tion, collective bargaining agreement, or memorandum of
17 understanding which has been issued, approved, or ratified
18 by any public employee relations board or commission or
19 by any State or political subdivision or its agents (manage-
20 ment officials) in effect on the day before the date of en-
21 actment of this Act, or the results of any election held
22 before the date of enactment of this Act.

23 **SEC. 8. CONSTRUCTION, COMPLIANCE, AND ENFORCE-**
24 **MENT.**

25 (a) CONSTRUCTION.—Nothing in this Act or the reg-
26 ulations issued under this Act shall be construed—

1 (1) to preempt or limit the remedies, rights,
2 and procedures of any law of any State or political
3 subdivision of any State or jurisdiction that substan-
4 tially provides greater or comparable rights and re-
5 sponsibilities described in section 4(b);

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 preempt 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—

15 (A) such State law permits an employee to
16 appear in his or her own behalf with respect to
17 his or her employment relations with the public
18 safety agency involved;

19 (B) such State law excludes from its cov-
20 erage employees of a state militia or national
21 guard;

22 (C) such rights and responsibilities have
23 not been extended to other categories of em-
24 ployees covered by this Act, in which case the
25 Authority shall only exercise the powers pro-

1 vided in section 5 of this Act with respect to
2 those categories of employees who have not
3 been afforded the rights and responsibilities de-
4 scribed in section 4(b); or

5 (D) such laws or ordinances provide that a
6 contract or memorandum of understanding be-
7 tween a public safety employer and a labor or-
8 ganization must be presented to a legislative
9 body as part of the process for approving such
10 contract or memorandum of understanding;

11 (4) to permit parties in States subject to the
12 regulations and procedures described in section 5 to
13 negotiate provisions that would prohibit an employee
14 from engaging in part-time employment or volunteer
15 activities during off-duty hours;

16 (5) to require a State to rescind or preempt
17 laws or ordinances of any of its political subdivisions
18 if such laws substantially provide rights and respon-
19 sibilities for public safety officers that are com-
20 parable to or greater than the rights and responsibil-
21 ities enumerated in section 4(b) of this Act; or

22 (6) preempt any State law that substantially
23 provides for the rights and responsibilities described
24 in section 4(b) solely because such law does not re-

1 quire bargaining with respect to pension and retire-
2 ment benefits.

3 (b) **PARTIAL EXEMPTION.**—A State may exempt
4 from its State law, or from the requirements established
5 under this Act, a political subdivision of the State that
6 has a population of less than 5,000 or that employs fewer
7 than 25 full time employees. For purposes of this sub-
8 section, the term “employees” includes each individual em-
9 ployed by the political subdivision except any individual
10 elected by popular vote or appointed to serve on a board
11 or commission.

12 (c) **ENFORCEMENT.**—Notwithstanding any other pro-
13 vision of the Act, and in the absence of a waiver of a
14 State’s sovereign immunity, the Authority shall have the
15 exclusive power to enforce the provisions of this Act with
16 respect to public safety officers employed by a State.

17 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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