

Calendar No. 162

107TH CONGRESS
1ST SESSION**S. 952**

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

IN THE SENATE OF THE UNITED STATES

MAY 24, 2001

Mr. GREGG (for himself, Mr. KENNEDY, Mr. DEWINE, Mr. BAYH, Mr. DAYTON, Mrs. CARNAHAN, Mr. NELSON of Nebraska, Mr. SARBANES, Mr. DASCHLE, Mr. CLELAND, Mr. NELSON of Florida, Mr. TORRICELLI, Mrs. LINCOLN, Mr. WELLSTONE, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

SEPTEMBER 19, 2001

Reported by Mr. KENNEDY, without amendment

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 2001”.

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

2 The Congress declares that the following is the policy
3 of the United States:

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

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

25 (3) The absence of adequate cooperation be-
26 tween public safety employers and employees has im-

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

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

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

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

24 (3) **EMPLOYER; PUBLIC SAFETY AGENCY.**—The
25 terms “employer” and “public safety agency” mean

1 any State, political subdivision of a State, the Dis-
2 trict of Columbia, or any territory or possession of
3 the United States that employs public safety offi-
4 cers.

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

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

15 (6) LAW ENFORCEMENT OFFICER.—The term
16 “law enforcement officer” has the meaning given
17 such term in section 1204(5) of the Omnibus Crime
18 Control and Safe Streets Act of 1968 (42 U.S.C.
19 3796b(5)).

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

1 requires or authorizes the individual to formulate,
2 determine, or influence the policies of the employer.

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

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

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 or management employee.

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

23 (10) SUPERVISORY EMPLOYEE.—The term “su-
24 pervisory employee” has the meaning given such
25 term under applicable State law in effect on the date

1 of enactment of this Act. If no such State law is in
 2 effect, the term means an individual, employed by a
 3 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 **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).

23 (2) SUBSEQUENT DETERMINATIONS.—

24 (A) IN GENERAL.—A determination made
 25 pursuant to paragraph (1) shall remain in ef-

1 fect unless and until the Authority issues a sub-
2 sequent determination, in accordance with the
3 procedures set forth in subparagraph (B).

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

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

1 mination of the Authority with respect to questions
2 of fact or law shall be found to be conclusive unless
3 the court determines that the Authority's decision
4 was arbitrary and capricious.

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

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

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

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

22 (4) Requiring an interest impasse resolution
23 mechanism, such as fact-finding, mediation, arbitra-
24 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.—If the Au-
 9 thority determines, acting pursuant to its authority under
 10 subsection (a), that a State does not substantially provide
 11 for the rights and responsibilities described in subsection
 12 (b), such State shall be subject to the regulations and pro-
 13 cedures described in section 5.

14 **SEC. 5. ROLE OF FEDERAL 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 safety employers and officers
 20 in States which the Authority has determined, acting pur-
 21 suant to its authority under section 4(a), do not substan-
 22 tially 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) determine the appropriateness of units for
4 labor organization representation;

5 (2) supervise or conduct elections to determine
6 whether a labor organization has been selected as an
7 exclusive representative by a majority of the employ-
8 ees in an appropriate unit;

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

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

13 (5) resolve exceptions to the awards of arbitra-
14 tors; and

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

24 (c) ENFORCEMENT.—

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

15 (2) PRIVATE RIGHT OF ACTION.—Unless the
16 Authority has filed a petition for enforcement as
17 provided in paragraph (1), any party has the right
18 to file suit in a State court of competent jurisdiction
19 to enforce compliance with the regulations issued by
20 the Authority pursuant to subsection (b), and to en-
21 force compliance with any order issued by the Au-
22 thority pursuant to this section. The right provided
23 by this subsection to bring a suit to enforce compli-
24 ance with any order issued by the Authority pursu-

1 ant to this section shall terminate upon the filing of
2 a petition seeking the same relief by the Authority.

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

4 A public safety employer, officer, or labor organiza-
5 tion may not engage in a lockout, sickout, work slowdown,
6 or strike or engage in any other action that is designed
7 to compel an employer, officer, or labor organization to
8 agree to the terms of a proposed contract and that will
9 measurably disrupt the delivery of emergency services, ex-
10 cept that it shall not be a violation of this section for an
11 employer, officer, or labor organization to refuse to pro-
12 vide services not required by the terms and conditions of
13 an existing contract.

14 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**
15 **AGREEMENTS.**

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

1 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

2 (a) CONSTRUCTION.—Nothing in this Act shall be
3 construed—

4 (1) to invalidate or limit the remedies, rights,
5 and procedures of any law of any State or political
6 subdivision of any State or jurisdiction that provides
7 collective bargaining rights for public safety officers
8 that are equal to or greater than the rights provided
9 under this Act; or

10 (2) to prevent a State from prohibiting bar-
11 gaining over issues which are traditional and cus-
12 tomary management functions, except as provided in
13 section 4(b)(3).

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

19 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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