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111TH CONGRESS
2D SESSION

S. 3194

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

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2010

Mr. REID introduced the following bill; which was read the first time

APRIL 13, 2010

Read the second time and placed on the calendar

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Safety Employer-Employee Cooperation Act of 2009".

SEC. 2. DECLARATION OF PURPOSE AND POLICY.

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

(1) Labor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. Labor-management cooperation fully utilizes the strengths of both parties to best serve the interests of the public, operating as a team, to carry out the public safety mission in a quality work environment. In many public safety agencies, it is the union that provides the institutional stability as elected leaders and appointees come and go.

(2) State and local public safety officers play an essential role in the efforts of the United States to detect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials, and other mass casualty incidents. State and local public safety officers, as first responders, are a component of our Nation's National Incident Management System, developed by the Department of Homeland Security to coordinate response to and recovery from terrorism, major natural disasters, and other major emergencies. Public safety employer-employee cooperation is essential in meeting these needs and is, therefore, in the National interest.

1 (3) The Federal Government needs to encour-
2 age conciliation, mediation, and voluntary arbitra-
3 tion to aid and encourage employers and the rep-
4 resentatives of their employees to reach and main-
5 tain agreements concerning rates of pay, hours, and
6 working conditions, and to make all reasonable ef-
7 forts through negotiations to settle their differences
8 by mutual agreement reached through collective bar-
9 gaining or by such methods as may be provided for
10 in any applicable agreement for the settlement of
11 disputes.

12 (4) The absence of adequate cooperation be-
13 tween public safety employers and employees has im-
14 plications for the security of employees and can af-
15 fect interstate and intrastate commerce. The lack of
16 such labor-management cooperation can detrimen-
17 tally impact the upgrading of police and fire services
18 of local communities, the health and well-being of
19 public safety officers, and the morale of the fire and
20 police departments. Additionally, these factors could
21 have significant commercial repercussions. Moreover,
22 providing minimal standards for collective bar-
23 gaining negotiations in the public safety sector can
24 prevent industrial strife between labor and manage-

1 ment that interferes with the normal flow of com-
2 merce.
3 (5) Many States and localities already provide
4 public safety officers with collective bargaining
5 rights comparable to or greater than the rights and
6 responsibilities set forth in this Act, and such State
7 and local laws should be respected.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:
10 (1) AUTHORITY.—The term "Authority" means
11 the Federal Labor Relations Authority.
12 (2) CONFIDENTIAL EMPLOYEE.—The term
13 "confidential employee" has the meaning given such
14 term under applicable State law on the date of en-
15 actment of this Act. If no such State law is in effect,
16 the term means an individual, employed by a public
17 safety employer, who—
18 (A) is designated as confidential; and
19 (B) is an individual who routinely assists,
20 in a confidential capacity, supervisory employ-
21 ees and management employees.
22 (3) EMERGENCY MEDICAL SERVICES PER-
23 SONNEL.—The term "emergency medical services
24 personnel" means an individual who provides out-of-
25 hospital emergency medical care, including an emer-

gency medical technician, paramedic, or first responder.

(4) EMPLOYER; PUBLIC SAFETY AGENCY.—The terms "employer" and "public safety officer" mean any State, or political subdivision of a State, that employs public safety officers.

(5) FIREFIGHTER.—The term "firefighter" has the meaning given the term "employee engaged in fire protection activities" in section 3(y) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(y)).

(6) LABOR ORGANIZATION.—The term "labor organization" means an organization composed in whole or in part of employees, in which employees participate, and which represents such employees before public safety agencies concerning grievances, conditions of employment, and related matters.

(7) LAW ENFORCEMENT OFFICER.—The term "law enforcement officer" has the meaning given such term in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b).

(8) MANAGEMENT EMPLOYEE.—The term "management employee" has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State

law is in effect, the term means an individual employed by a public safety employer in a position that requires or authorizes the individual to formulate, determine, or influence the policies of the employer.

(9) PERSON.—The term "person" means an individual or a labor organization.

(10) PUBLIC SAFETY OFFICER.—The term "public safety officer"—

(A) means an employee of a public safety agency who is a law enforcement officer, a firefighter, or an emergency medical services personnel;

(B) includes an individual who is temporarily transferred to a supervisory or management position; and

(C) does not include a permanent supervisory, management, or confidential employee.

(11) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, and any territory or possession of the United States.

(12) SUBSTANTIALLY PROVIDES.—The term "substantially provides", when used with respect to the rights and responsibilities described in section

4(b), means compliance with each right and responsibility described in such section.

(13) SUPERVISORY EMPLOYEE.—The term "supervisory employee" has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual, employed by a public safety employer, who—

(A) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment; and

(B) devotes a majority of time at work to exercising such authority.

SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBILITIES.

(a) DETERMINATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination as to whether a State

1 substantially provides for the rights and responsibil-
2 ities described in subsection (b).
3 (2) CONSIDERATION OF ADDITIONAL OPIN-
4 IONS.—In making the determination described in
5 paragraph (1), the Authority shall consider the opin-
6 ions of affected employers and labor organizations.
7 In the case where the Authority is notified by an af-
8 fected employer and labor organization that both
9 parties agree that the law applicable to such em-
10 ployer and labor organization substantially provides
11 for the rights and responsibilities described in sub-
12 section (b), the Authority shall give such agreement
13 weight to the maximum extent practicable in making
14 the Authority's determination under this subsection.
15 (3) LIMITED CRITERIA.—In making the deter-
16 mination described in paragraph (1), the Authority
17 shall be limited to the application of the criteria de-
18 scribed in subsection (b) and shall not require any
19 additional criteria.
20 (4) SUBSEQUENT DETERMINATIONS.—
21 (A) IN GENERAL.—A determination made
22 pursuant to paragraph (1) shall remain in ef-
23 fect unless and until the Authority issues a sub-
24 sequent determination, in accordance with the
25 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, an employer or a labor organiza-
5 tion may submit a written request for a subse-
6 quent determination. If satisfied that a material
7 change in State law or its interpretation has oc-
8 curred, the Authority shall issue a subsequent
9 determination not later than 30 days after re-
10 ceipt of such request.

11 (5) JUDICIAL REVIEW.—Any person or em-
12 ployer aggrieved by a determination of the Authority
13 under this section may, during the 60-day period be-
14 ginning on the date on which the determination was
15 made, petition any United States Court of Appeals
16 in the circuit in which the person or employer re-
17 sides or transacts business or in the District of Co-
18 lumbia circuit, for judicial review. In any judicial re-
19 view of a determination by the Authority, the proce-
20 dures contained in subsections (c) and (d) of section
21 7123 of title 5, United States Code, shall be fol-
22 lowed.

23 (b) RIGHTS AND RESPONSIBILITIES.—In making a
24 determination described in subsection (a), the Authority
25 shall consider a State's law to substantially provide the

1 required rights and responsibilities unless such law fails
2 to provide rights and responsibilities comparable to or
3 greater than the following:

4 (1) Granting public safety officers the right to
5 form and join a labor organization, which may ex-
6 clude management employees, supervisory employ-
7 ees, and confidential employees, that is, or seeks to
8 be, recognized as the exclusive bargaining represent-
9 ative of such employees.

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

16 (3) Providing for the right to bargain over
17 hours, wages, and terms and conditions of employ-
18 ment.

19 (4) Making available an interest impasse resolu-
20 tion mechanism, such as fact-finding, mediation, ar-
21 bitration, or comparable procedures.

22 (5) Requiring enforcement of all rights, respon-
23 sibilities, and protections provided by State law and
24 enumerated in this section, and of any written con-
25 tract or memorandum of understanding between a

1 labor organization and a public safety employer,
2 through—
3 (A) a State administrative agency, if the
4 State so chooses; and
5 (B) at the election of an aggrieved party,
6 the State courts.
7 (c) COMPLIANCE WITH REQUIREMENTS.—If the Au-
8 thority determines, acting pursuant to its authority under
9 subsection (a), that a State substantially provides rights
10 and responsibilities described in subsection (b), then this
11 Act shall not preempt State law.
12 (d) FAILURE TO MEET REQUIREMENTS.—
13 (1) IN GENERAL.—If the Authority determines,
14 acting pursuant to its authority under subsection
15 (a), that a State does not substantially provide for
16 the rights and responsibilities described in sub-
17 section (b), then such State shall be subject to the
18 regulations and procedures described in section 5 be-
19 ginning on the later of—
20 (A) the date that is 2 years after the date
21 of enactment of this Act;
22 (B) the date that is the last day of the
23 first regular session of the legislature of the
24 State that begins after the date of the enact-
25 ment of this Act; or

(C) in the case of a State receiving a subsequent determination under subsection (a)(4), the date that is the last day of the first regular session of the legislature of the State that begins after the date the Authority made the determination.

(2) PARTIAL FAILURE.—If the Authority makes a determination that a State does not substantially provide for the rights and responsibilities described in subsection (b) solely because the State law substantially provides for such rights and responsibilities for certain categories of public safety officers covered by the Act but not others, the Authority shall identify those categories of public safety officers that shall be subject to the regulations and procedures described in section 5, pursuant to section 8(b)(3) and beginning on the appropriate date described in paragraph (1), and those categories of public safety officers that shall remain subject to State law.

SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.

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

1 gaining procedures for employers and public safety officers
2 in States which the Authority has determined, acting pur-
3 suant to section 4(a), do not substantially provide for such
4 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 voting majority of the
14 employees 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

(7) take such other actions as are necessary and appropriate to effectively administer this Act, including issuing subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States, and administering oaths, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining witnesses.

(c) ENFORCEMENT.—

(1) AUTHORITY TO PETITION COURT.—The Authority may petition any United States Court of Appeals with jurisdiction over the parties, or the United States Court of Appeals for the District of Columbia Circuit, to enforce any final orders under this section, and for appropriate temporary relief or a restraining order. Any petition under this section shall be conducted in accordance with subsections (c) and (d) of section 7123 of title 5, United States Code.

(2) PRIVATE RIGHT OF ACTION.—Unless the Authority has filed a petition for enforcement as provided in paragraph (1), any party has the right to file suit in any appropriate district court of the United States to enforce compliance with the regula-

1 tions issued by the Authority pursuant to subsection
2 (b), and to enforce compliance with any order issued
3 by the Authority pursuant to this section. The right
4 provided by this subsection to bring a suit to enforce
5 compliance with any order issued by the Authority
6 pursuant to this section shall terminate upon the fil-
7 ing of a petition seeking the same relief by the Au-
8 thority.

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

10 (a) IN GENERAL.—Subject to subsection (b), an em-
11 ployer, public safety officer, or labor organization may not
12 engage in a lockout, sickout, work slowdown, strike, or any
13 other organized job action that will measurably disrupt the
14 delivery of emergency services and is designed to compel
15 an employer, public safety officer, or labor organization
16 to agree to the terms of a proposed contract.

17 (b) NO PREEMPTION.—Nothing in this section shall
18 be construed to preempt any law of any State or political
19 subdivision of any State with respect to strikes by public
20 safety officers.

21 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**
22 **AGREEMENTS.**

23 A certification, recognition, election-held, collective
24 bargaining agreement or memorandum of understanding
25 which has been issued, approved, or ratified by any public

1 employee relations board or commission or by any State
2 or political subdivision or its agents (management offi-
3 cials) and is in effect on the day before the date of enact-
4 ment of this Act shall not be invalidated by the enactment
5 of this Act.

6 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

7 (a) CONSTRUCTION.—Nothing in this Act shall be
8 construed—

9 (1) to preempt or limit the remedies, rights,
10 and procedures of any law of any State or political
11 subdivision of any State that provides greater or
12 comparable rights and responsibilities than the
13 rights and responsibilities described in section 4(b);

14 (2) to prevent a State from enforcing a right-
15 to-work law that prohibits employers and labor orga-
16 nizations from negotiating provisions in a labor
17 agreement that require union membership or pay-
18 ment of union fees as a condition of employment;

19 (3) to preempt or limit any State law in effect
20 on the date of enactment of this Act that provides
21 for the rights and responsibilities described in sec-
22 tion 4(b) solely because such State law permits an
23 employee to appear on the employee's own behalf
24 with respect to the employee's employment relations
25 with the public safety agency involved;

1 (4) to preempt or limit any State law in effect
2 on the date of enactment of this Act that provides
3 for the rights and responsibilities described in sec-
4 tion 4(b) solely because such State law excludes
5 from its coverage employees of a State militia or na-
6 tional guard;
7 (5) to permit parties in States subject to the
8 regulations and procedures described in section 5 to
9 negotiate provisions that would prohibit an employee
10 from engaging in part-time employment or volunteer
11 activities during off-duty hours;
12 (6) 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; or
16 (7) to preempt or limit the laws or ordinances
17 of any State or political subdivision of a State that
18 provide for the rights and responsibilities described
19 in section 4(b) solely because such law or ordinance
20 does not require bargaining with respect to pension,
21 retirement, or health benefits.
22 For purposes of paragraph (6), the term "employee" in-
23 cludes each and every individual employed by the political
24 subdivision except any individual elected by popular vote
25 or appointed to serve on a board or commission.

1 (b) COMPLIANCE.—

2 (1) ACTIONS OF STATES.—Nothing in this Act
3 or the regulations promulgated under this Act shall
4 be construed to require a State to rescind or pre-
5 empt the laws or ordinances of any of the State's
6 political subdivisions if such laws provide rights and
7 responsibilities for public safety officers that are
8 comparable to or greater than the rights and respon-
9 sibilities described in section 4(b).

10 (2) ACTIONS OF THE AUTHORITY.—Nothing in
11 this Act or the regulations promulgated under this
12 Act shall be construed to preempt—

13 (A) the laws or ordinances of any State or
14 political subdivision of a State, if such laws pro-
15 vide collective bargaining rights for public safe-
16 ty officers that are comparable to or greater
17 than the rights enumerated in section 4(b);

18 (B) the laws or ordinances of any State or
19 political subdivision of a State that provide for
20 the rights and responsibilities described in sec-
21 tion 4(b) with respect to certain categories of
22 public safety officers covered by this Act solely
23 because such rights and responsibilities have
24 not been extended to other categories of public
25 safety officers covered by this Act; or

1 (C) the laws or ordinances of any State or
2 political subdivision of a State that provide for
3 the rights and responsibilities described in sec-
4 tion 4(b), solely because such laws or ordi-
5 nances provide that a contract or memorandum
6 of understanding between a public safety em-
7 ployer and a labor organization must be pre-
8 sented to a legislative body as part of the proc-
9 ess for approving such contract or memo-
10 randum of understanding.

11 (3) LIMITED ENFORCEMENT POWER.—In the
12 case of a law described in paragraph (2)(B), the Au-
13 thority shall only exercise the powers provided in
14 section 5 with respect to those categories of public
15 safety officers who have not been afforded the rights
16 and responsibilities described in section 4(b).

17 (4) EXCLUSIVE ENFORCEMENT PROVISION.—
18 Notwithstanding any other provision of the Act, and
19 in the absence of a waiver of a State's sovereign im-
20 munity, the Authority shall have the exclusive power
21 to enforce the provisions of this Act with respect to
22 employees of a State.

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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