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

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2007

Mr. Gregg (for himself, Mr. Kennedy, Mr. Coleman, Mr. Dodd, Ms. Collins, Mr. Harkin, Mr. Domenici, Ms. Mikulski, Mr. Martinez, Mrs. Murray, Mr. Smith, Mrs. Clinton, Ms. Snowe, Mr. Obama, Mr. Specter, Mr. Sanders, Mr. Brown, Mr. Stevens, Mr. Lieberman, Mr. Sununu, and Mr. Pryor) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 2007”.

6 SEC. 2. DECLARATION OF PURPOSE AND POLICY.

7 The Congress declares that the following is the policy

8 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.
(3) The Federal Government needs to encourage conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts through negotiations to settle their differences by mutual agreement reached through collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes.

(4) The absence of adequate cooperation between public safety employers and employees has implications for the security of employees and can affect interstate and intrastate commerce. The lack of such labor-management cooperation can detrimentally impact the upgrading of police and fire services of local communities, the health and well-being of public safety officers, and the morale of the fire and police departments. Additionally, these factors could have significant commercial repercussions. Moreover, providing minimal standards for collective bargaining negotiations in the public safety sector can prevent industrial strife between labor and manage-
ment that interferes with the normal flow of com-
merce.

SEC. 3. DEFINITIONS.

In this Act:

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

(2) EMERGENCY MEDICAL SERVICES PERSONNEL.—The term “emergency medical services
personnel” means an individual who provides out-of-
hospital emergency medical care, including an emer-
gency medical technician, paramedic, or first re-
ponder.

(3) EMPLOYER; PUBLIC SAFETY AGENCY.—The
terms “employer” and “public safety agency” mean
any State, or political subdivision of a State, that
employs public safety officers.

(4) 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 (29 U.S.C. 203(y)).

(5) 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 be-
fore public safety agencies concerning grievances, conditions of employment, and related matters.

(6) **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).

(7) **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.

(8) **Person.**—The term “person” means an individual or a labor organization.

(9) **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 or management employee.

(10) 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.

(11) SUBSTANTIALLY PROVIDES.—The term “substantially provides” means compliance with the essential requirements of this Act, specifically, the right to form and join a labor organization, the right to bargain over wages, hours, and conditions of employment, the right to sign an enforceable contract, and availability of some form of mechanism to break an impasse, such as arbitration, mediation, or fact-finding.

(12) 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 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 substantially provides for the rights and responsibilities described in subsection (b). In making such determinations, the Authority shall consider and give weight, to the maximum extent practicable, to the opinion of affected parties.

(2) Subsequent determinations.—

(A) In general.—A determination made pursuant to paragraph (1) shall remain in ef-
fect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).

(B) PROCEDURES FOR SUBSEQUENT DETERMINATIONS.—Upon establishing that a material change in State law or its interpretation has occurred, an employer or a labor organization may submit a written request for a subsequent determination. If satisfied that a material change in State law or its interpretation has occurred, the Authority shall issue a subsequent determination not later than 30 days after receipt of such request.

(3) JUDICIAL REVIEW.—Any person or employer aggrieved by a determination of the Authority under this section may, during the 60-day period beginning on the date on which the determination was made, petition any United States Court of Appeals in the circuit in which the person or employer resides or transacts business or in the District of Columbia circuit, for judicial review. In any judicial review of a determination by the Authority, the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed.
(b) RIGHTS AND RESPONSIBILITIES.—In making a determination described in subsection (a), the Authority shall consider whether State law provides rights and responsibilities comparable to or greater than the following:

(1) Granting public safety officers the right to form and join a labor organization, which may exclude management employees and supervisory employees, that is, or seeks to be, recognized as the exclusive bargaining representative of such employees.

(2) Requiring public safety employers to recognize the employees’ labor organization (freely chosen by a majority of the employees), to agree to bargain with the labor organization, and to commit any agreements to writing in a contract or memorandum of understanding.

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

(4) Making available an interest impasse resolution mechanism, such as fact-finding, mediation, arbitration, or comparable procedures.

(5) Requiring enforcement through State courts of—

(A) all rights, responsibilities, and protections provided by State law and enumerated in this section; and
(B) any written contract or memorandum of understanding.

(c) Failure To Meet Requirements.—

(1) In General.—If the Authority determines, acting pursuant to its authority under subsection (a), that a State does not substantially provide for the rights and responsibilities described in subsection (b), such State shall be subject to the regulations and procedures described in section 5.

(2) Effective Date.—Paragraph (1) shall take effect on the date that is 2 years after the date of enactment of this Act.

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 bargaining procedures for employers and public safety officers in States which the Authority has determined, acting pursuant to section 4(a), do not substantially provide for such rights and responsibilities.

(b) Role of the Federal Labor Relations Authority.—The Authority, to the extent provided in this Act and in accordance with regulations prescribed by the Authority, shall—
determine the appropriateness of units for labor organization representation;

(2) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a voting majority of the employees in an appropriate unit;

(3) resolve issues relating to the duty to bargain in good faith;

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

(5) resolve exceptions to the awards of arbitrators;

(6) protect the right of each employee to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and protect each employee in the 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 re-
responses to written interrogatories, and receiving and
examining witnesses.

(c) Enforcement.—

(1) Authority to petition court.—The Au-
thority may petition any United States Court of Ap-
peals 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 a State court of competent jurisdiction
to enforce compliance with the regulations issued by
the Authority pursuant to subsection (b), and to en-
force compliance with any order issued by the Au-
thority pursuant to this section. The right provided
by this subsection to bring a suit to enforce compli-
ance with any order issued by the Authority pursu-
ant to this section shall terminate upon the filing of
a petition seeking the same relief by the Authority.
SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.

(a) Prohibition.—An employer, public safety officer, or labor organization may not engage in a lockout, sickout, work slowdown, strike, or any other action that will measurably disrupt the delivery of emergency services and is designed to compel an employer, public safety officer, or labor organization to agree to the terms of a proposed contract.

(b) Mandatory Terms and Conditions.—It shall not be a violation of subsection (a) for a public safety officer or labor organization to refuse to carry out services that are not required under the mandatory terms and conditions of employment applicable to the public safety officer or labor organization.

SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

A certification, recognition, election-held, collective bargaining agreement or memorandum of understanding which has been issued, approved, or ratified by any public employee relations board or commission or by any State or political subdivision or its agents (management officials) and is in effect on the day before the date of enactment of this Act shall not be invalidated by the enactment of this Act.
SEC. 8. CONSTRUCTION AND COMPLIANCE.

(a) Construction.—Nothing in this Act shall be construed—

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

(2) to prevent a State from enforcing a right-to-work law that prohibits employers and labor organizations from negotiating provisions in a labor agreement that require union membership or payment of union fees as a condition of employment;

(3) to preempt or limit any State law in effect on the date of enactment of this Act that provides for the rights and responsibilities described in section 4(b) solely because such State law permits an employee to appear on the employee’s own behalf with respect to the employee’s employment relations with the public safety agency involved;

(4) to preempt or limit any State law in effect on the date of enactment of this Act that provides for the rights and responsibilities described in section 4(b) solely because such State law excludes
from its coverage employees of a State militia or na-
tional guard;

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

(6) to prohibit a State from exempting from
coverage under this Act a political subdivision of the
State that has a population of less than 5,000 or
that employs less than 25 full-time employees; or

(7) to preempt or limit the laws or ordinances
of any State or political subdivision of a State that
provide for the rights and responsibilities described
in section 4(b) solely because such law does not re-
quire bargaining with respect to pension, retirement,
or health benefits.

For purposes of paragraph (6), the term “employee” in-
cludes each and every individual employed by the political
subdivision except any individual elected by popular vote
or appointed to serve on a board or commission.

(b) COMPLIANCE.—

(1) ACTIONS OF STATES.—Nothing in this Act
or the regulations promulgated under this Act shall
be construed to require a State to rescind or pre-
empt the laws or ordinances of any of its political subdivisions if such laws provide rights and responsibili-
ies for public safety officers that are comparable to or greater than the rights and responsibili-
ies described in section 4(b).

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

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

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

(C) the laws or ordinances of any State or political subdivision of a State that provides for the rights and responsibilities described in section 4(b), solely because such laws or ordi-
nances provide that a contract or memorandum of understanding between a public safety employer and a labor organization must be presented to a legislative body as part of the process for approving such contract or memorandum of understanding.

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

(4) EXCLUSIVE ENFORCEMENT PROVISION.—Notwithstanding any other provision of the Act, and in the absence of a waiver of a State’s sovereign immunity, the Authority shall have the exclusive power to enforce the provisions of this Act with respect to employees of a State or political subdivision of a State.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

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

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