

The National "Bargain"

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Since 1995, Representative Dale Kildee (D-MI) has introduced a bill at the beginning of each new session of Congress that would require all states to create collective bargaining procedures for public safety officials. The current iteration of this bill, the Public Safety Employer-Employee Cooperation Act of 2009 ("Act"),[1] is quite similar to previous versions introduced from 1995-2008, and is once again making local governments nervous.

The Act applies to any "public safety officer," defined as (1) an employee of a public safety agency who is a law enforcement officer, a firefighter, or emergency medical services personnel; (2) an individual who is temporarily transferred to a supervisory or management position; and (3) does not include a permanent supervisory or management employee.[2] Under the Act, public safety officers have the right to form and join a labor organization, which could be recognized as the exclusive bargaining representative. Employers would be required to recognize the labor organization, agree to bargain with the organization, and commit any agreements to writing in a contract or a memorandum of understanding. The employers must also bargain over wages, hours, and conditions of employment with the labor organization, and must also include an "interest impasse resolution mechanism," such as fact-finding, mediation, arbitration, or comparable procedures.[3]

State laws that already provide for collective bargaining will be examined by the Federal Labor Relations Authority (FLRA), an independent administrative federal agency, to make sure that each state provides for the specific rights mentioned above. The FLRA has 180 days in which to examine all the state collective bargaining procedures currently in effect.[4] If it determines that a state does not "substantially provide" for the rights and responsibilities provided under the Bill, then the FLRA shall issue regulations that (1) determine the appropriateness of units for labor organization representation; (2) supervise and 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; (7) manage and direct state compliance by order; and (8) includes any other necessary and appropriate measure to ensure compliance, such as issuing subpoenas, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining witnesses.[5]

Further, the Bill provides that employers may not engage in a lock-out of public safety officers, and that labor organizations and public safety officers may not call for or engage in a strike against the public safety employer.[6]

Public safety officers, our first responders, deserve the same support and respect by public employers as they receive from the general public. The real question that still needs to be answered is whether the United States needs federally-mandated collective bargaining for public safety officers. This legislation would require almost all state and local governments to recognize public sector unions as the exclusive representative of their public safety employees. This is despite the fact that many public safety employees already belong to unions. Thirty-four states already have collective bargaining for both police and firefighters, while another four states extend collective bargaining privileges to firefighters alone.[7] These states have at least some form of state protected right to bargain, each with procedures that pay due regard to the labor climate in that state. A one-size-fits-all rule does not account for the fact that state and local governments are in the best position to take into account local history and custom. More importantly, for local government lawyers, the Act discusses solely state labor law and process, leaving open the question of its application to city and county governments.

It will be interesting to see how state and local governments will respond to the Act if passed. A number of national organizations, such as IMLA, International City Managers Association, International Public Management Association for Human Resources, National League of Cities, and the National Association of Counties have expressed concerns over Congress' efforts to federalize and force states to collectively bargain. Principles of federalism and the Tenth Amendment are some of the primary reasons states and localities are opposed to the Act, as a new federal power over collective bargaining essentially supplants state and local decision-making authority relating to the public employer/employee relationship. In addition, there are additional constitutional concerns regarding the authority of Congress to pass laws abrogating states' immunity from lawsuits.

Notes

1. Public Safety Employer-Employee Cooperation Act of 2009, H.R. 413, 111th Cong. (2009).
2. H.R. 413, 111th Cong. §3 (2009).
3. H.R. 413, 111th Cong. §4(b) (2009).
4. H.R. 413, 111th Cong. §4(a) (2009).
5. H.R. 413, 111th Cong. §5(b) (2009).
6. H.R. 413, 111th Cong. §6 (2009).
7. R. Theodore Clark, Jr., Partner, Seyfarth Shaw, LLP, "Testimony Before the Committee on Education and Labor, U.S. House of Representatives," June 5, 2007, at http://edworkforce.house.gov/testimony/060507RTheodoreClarkTestimony.pdf.