

117TH CONGRESS
1ST SESSION

H. R. 2586

To provide collective bargaining rights for fire fighters and emergency medical services personnel employed by States or their political subdivisions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2021

Mr. KILDEE (for himself, Mr. FITZPATRICK, Mr. RODNEY DAVIS of Illinois, Mrs. HAYES, Ms. JAYAPAL, Ms. LEGER FERNANDEZ, Ms. MANNING, Mrs. MCBATH, Mr. MRVAN, Mr. PASCARELL, Ms. WILD, and Mr. POCAN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To provide collective bargaining rights for fire fighters and emergency medical services personnel employed by States or their political subdivisions, and for other purposes.

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 “Fire Fighters and
5 EMS Employer-Employee Cooperation Act”.

6 **SEC. 2. PURPOSE AND POLICY.**

7 Congress declares that the following is the policy of
8 the United States:

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

12 (2) State and local fire and EMS personnel
13 play an essential role in the efforts of the United
14 States to detect, prevent, and respond to terrorist
15 attacks, and to respond to natural disasters, haz-
16 ardous materials, and other mass casualty incidents.
17 State and local fire and EMS personnel, as first re-
18 sponders, are a component of the National Incident
19 Management System, developed by the Department
20 of Homeland Security to coordinate response to and
21 recovery from terrorism, major natural disasters,
22 and other major emergencies. Fire and EMS em-
23 ployer-employee cooperation is essential in meeting
24 these needs and is, therefore, in the National inter-
25 est.

1 (3) The Federal Government needs to encour-
2 age conciliation, mediation, and arbitration to aid
3 and encourage employers and the representatives of
4 their employees to reach and maintain agreements
5 concerning rates of pay, hours, and working condi-
6 tions, and to make all reasonable efforts through ne-
7 gotiations to settle their differences by mutual agree-
8 ment reached through collective bargaining or by
9 such methods as may be provided for in any applica-
10 ble agreement for the settlement of disputes.

11 (4) The absence of adequate cooperation be-
12 tween fire and EMS employers and employees has
13 implications for the security of employees and can
14 affect interstate and intrastate commerce. The lack
15 of such labor-management cooperation can detrimen-
16 tally impact the upgrading of fire and emergency
17 medical services of local communities, the health and
18 well-being of fire and EMS personnel, and the mo-
19 rale of fire and EMS departments. Additionally,
20 these factors could have significant commercial re-
21 percussions. Moreover, providing minimal standards
22 for collective bargaining negotiations in the fire and
23 EMS sector can prevent industrial strife between
24 labor and management that interferes with the nor-
25 mal flow of commerce.

1 (5) Many States and localities already provide
2 fire and EMS personnel with collective bargaining
3 rights comparable to or greater than the rights and
4 responsibilities set forth in this Act, and such State
5 and local laws should be respected.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

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

10 (2) **CONFIDENTIAL EMPLOYEE.**—The term
11 “confidential employee” has the meaning given such
12 term under applicable State law on the date of en-
13 actment of this Act. If no such State law is in effect,
14 the term means an individual, employed by a fire
15 and EMS employer, who—

16 (A) is designated as confidential; and

17 (B) is an individual who routinely assists,
18 in a confidential capacity, supervisory employ-
19 ees and management employees.

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

1 (4) EMPLOYER; FIRE AND EMS AGENCY; FIRE
2 AND EMS EMPLOYER.—The terms “employer”, “fire
3 and EMS agency”, and “fire and EMS employer”
4 mean any State, or political subdivision of a State,
5 that employs fire and EMS personnel.

6 (5) FIRE AND EMS PERSONNEL.—The term
7 “fire and EMS personnel”—

8 (A) means an employee of a fire and EMS
9 agency who is a firefighter and/or an emergency
10 medical services personnel;

11 (B) includes an individual who is tempo-
12 rarily transferred to a supervisory or manage-
13 ment position; and

14 (C) does not include a permanent super-
15 visory, management, or confidential employee.

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

20 (7) LABOR ORGANIZATION.—The term “labor
21 organization” means an organization of any kind, in
22 which employees participate and which exists for the
23 purpose, in whole or in part, of dealing with employ-
24 ers concerning grievances, conditions of employment,
25 and related matters.

1 (8) MANAGEMENT EMPLOYEE.—The term
2 “management employee” has the meaning given
3 such term under applicable State law in effect on
4 the date of enactment of this Act. If no such State
5 law is in effect, the term means an individual em-
6 ployed by a fire and EMS employer in a position
7 that requires or authorizes the individual to formu-
8 late, determine, or influence the policies of the em-
9 ployer.

10 (9) PERSON.—The term “person” means an in-
11 dividual or a labor organization.

12 (10) STATE.—The term “State” means each of
13 the several States of the United States, the District
14 of Columbia, and any territory or possession of the
15 United States.

16 (11) SUBSTANTIALLY PROVIDES.—The term
17 “substantially provides”, when used with respect to
18 the rights and responsibilities described in section
19 4(b), means comparable to or greater than each
20 right and responsibility described in such section.

21 (12) SUPERVISORY EMPLOYEE.—The term “su-
22 pervisory employee” has the meaning given such
23 term under applicable State law in effect on the date
24 of enactment of this Act. If no such State law is in

1 effect, the term means an individual, employed by a
2 fire and EMS employer, who—

3 (A) has the authority in the interest of the
4 employer to hire, direct, assign, promote, re-
5 ward, transfer, furlough, lay off, recall, sus-
6 pend, discipline, or remove fire and EMS per-
7 sonnel, to adjust their grievances, or to effec-
8 tively recommend such action, if the exercise of
9 the authority is not merely routine or clerical in
10 nature but requires the consistent exercise of
11 independent judgment; and

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

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

16 (a) DETERMINATION.—

17 (1) IN GENERAL.—Not later than 180 days
18 after the date of enactment of this Act, the Author-
19 ity shall make a determination as to whether a State
20 substantially provides for the rights and responsibil-
21 ities described in subsection (b).

22 (2) CONSIDERATION OF ADDITIONAL OPIN-
23 IONS.—In making the determination described in
24 paragraph (1), the Authority shall consider the opin-
25 ions of affected employers and labor organizations.

1 In the case where the Authority is notified by an af-
2 fected employer and labor organization that both
3 parties agree that the law applicable to such em-
4 ployer and labor organization substantially provides
5 for the rights and responsibilities described in sub-
6 section (b), the Authority shall give such agreement
7 weight to the maximum extent practicable in making
8 the Authority's determination under this subsection.

9 (3) LIMITED CRITERIA.—In making the deter-
10 mination described in paragraph (1), the Authority
11 shall be limited to the application of the criteria de-
12 scribed in subsection (b) and shall not require any
13 additional criteria.

14 (4) SUBSEQUENT DETERMINATIONS.—

15 (A) IN GENERAL.—A determination made
16 pursuant to paragraph (1) shall remain in ef-
17 fect unless and until the Authority issues a sub-
18 sequent determination, in accordance with the
19 procedures set forth in subparagraph (B) of
20 this section.

21 (B) PROCEDURES FOR SUBSEQUENT DE-
22 TERMINATIONS.—Upon establishing that a ma-
23 terial change in State law or its interpretation
24 has occurred, an employer or a labor organiza-
25 tion may submit a written request for a subse-

1 quent determination. If satisfied that a material
2 change in State law or its interpretation has oc-
3 curred, the Authority shall issue a subsequent
4 determination not later than 30 days after re-
5 ceipt of such request.

6 (5) JUDICIAL REVIEW.—Any person or em-
7 ployer aggrieved by a determination of the Authority
8 under this section may, during the 60-day period be-
9 ginning on the date on which the determination was
10 made, petition any United States Court of Appeals
11 in the circuit in which the person or employer re-
12 sides or transacts business or in the District of Co-
13 lumbia Circuit, for judicial review.

14 (b) RIGHTS AND RESPONSIBILITIES.—In making a
15 determination described in subsection (a), the Authority
16 shall consider a State’s law to substantially provide the
17 required rights and responsibilities unless such law fails
18 to provide rights and responsibilities comparable to or
19 greater than the following:

20 (1) Granting fire and EMS personnel the right
21 to form and join a labor organization, which may ex-
22 clude management employees, supervisory employ-
23 ees, and confidential employees, that is, or seeks to
24 be, recognized as the exclusive bargaining represent-
25 ative of such employees.

1 (2) Requiring fire and EMS employers to recog-
2 nize the employees' labor organization (freely chosen
3 by a majority of the employees), to agree to bargain
4 with the labor organization, and to commit any
5 agreements to writing in a contract or memorandum
6 of understanding.

7 (3) Providing for the right to bargain over
8 hours, wages, and terms and conditions of employ-
9 ment.

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

13 (5) Requiring enforcement of all rights, respon-
14 sibilities, and protections enumerated in this section,
15 and of any written contract or memorandum of un-
16 derstanding between a labor organization and a fire
17 and EMS employer, through—

18 (A) a State administrative agency, if the
19 State so chooses; and/or

20 (B) any court of competent jurisdiction.

21 (c) COMPLIANCE WITH REQUIREMENTS.—If the Au-
22 thority determines, acting pursuant to its authority under
23 subsection (a), that a State substantially provides rights
24 and responsibilities described in subsection (b), then this
25 Act shall not preempt State law.

1 (d) FAILURE TO MEET REQUIREMENTS.—

2 (1) IN GENERAL.—If the Authority determines,
3 acting pursuant to its authority under subsection
4 (a), that a State does not substantially provide for
5 the rights and responsibilities described in sub-
6 section (b), then such State shall be subject to the
7 regulations and procedures described in section 5 be-
8 ginning on the later of—

9 (A) the date that is 2 years after the date
10 of enactment of this Act;

11 (B) the date that is the last day of the
12 first regular session of the legislature of the
13 State that begins after the date the Authority
14 makes a determination under subsection (a)(1);
15 or

16 (C) in the case of a State receiving a sub-
17 sequent determination under subsection (a)(4),
18 the date that is the last day of the first regular
19 session of the legislature of the State that be-
20 gins after the date the Authority made the de-
21 termination.

22 (2) PARTIAL FAILURE.—If the Authority makes
23 a determination that a State does not substantially
24 provide for the rights and responsibilities described
25 in subsection (b) solely because the State law sub-

1 stantially provides for such rights and responsibil-
2 ities for certain categories of fire and EMS per-
3 sonnel covered by the Act but not others, the Au-
4 thority shall identify those categories of fire and
5 EMS personnel that shall be subject to the regula-
6 tions and procedures described in section 5, pursu-
7 ant to section 8(b)(3) and beginning on the appro-
8 priate date described in paragraph (1), and those
9 categories of fire and EMS personnel that shall re-
10 main solely subject to State law with respect to the
11 rights and responsibilities described in subsection
12 (b).

13 **SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.**

14 (a) IN GENERAL.—Not later than 1 year after the
15 date of enactment of this Act, the Authority shall issue
16 regulations, in accordance with the rights and responsibil-
17 ities described in section 4(b), establishing collective bar-
18 gaining procedures for employers and fire and EMS per-
19 sonnel in States where the Authority has determined, act-
20 ing pursuant to section 4(a), do not substantially provide
21 for such rights and responsibilities.

22 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
23 THORITY.—The Authority, to the extent provided in this
24 Act and in accordance with regulations prescribed by the
25 Authority, shall—

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

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

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

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

11 (5) resolve exceptions to the awards of arbitra-
12 tors;

13 (6) protect the right of each employee to form,
14 join, or assist any labor organization, or to refrain
15 from any such activity, freely and without fear of
16 penalty or reprisal, and protect each employee in the
17 exercise of such right; and

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

1 sponses to written interrogatories, and receiving and
2 examining witnesses.

3 (c) ENFORCEMENT.—

4 (1) AUTHORITY TO PETITION COURT.—The Au-
5 thority may petition any United States Court of Ap-
6 peals with jurisdiction over the parties, or the
7 United States Court of Appeals for the District of
8 Columbia Circuit, to enforce any final orders under
9 this section, and for appropriate temporary relief or
10 a restraining order.

11 (2) PRIVATE RIGHT OF ACTION.—Unless the
12 Authority has filed a petition for enforcement as
13 provided in paragraph (1), any party has the right
14 to file suit in any appropriate district court of the
15 United States to enforce compliance with the regula-
16 tions issued by the Authority pursuant to this sec-
17 tion, or to enforce compliance with any order issued
18 by the Authority pursuant to this section. The right
19 provided by this subsection to bring a suit to enforce
20 compliance with any order issued by the Authority
21 pursuant to this section shall terminate upon the fil-
22 ing of a petition seeking the same relief by the Au-
23 thority. Enforcement against a State shall be pursu-
24 ant to section 8(b)(4).

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

2 (a) IN GENERAL.—Subject to subsection (b), an em-
3 ployer, fire and EMS personnel, or labor organization may
4 not engage in a lockout, sickout, work slowdown, strike,
5 or any other organized job action that will measurably dis-
6 rupt the delivery of emergency services and is designed
7 to compel an employer, fire and EMS personnel, or labor
8 organization to agree to the terms of a proposed contract.

9 (b) NO PREEMPTION.—Nothing in this section shall
10 be construed to preempt any law of any State or political
11 subdivision of any State with respect to strikes by fire and
12 EMS personnel.

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

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

22 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

23 (a) CONSTRUCTION.—Nothing in this Act shall be
24 construed—

25 (1) to preempt or limit the remedies, rights,
26 and procedures of any law of any State or political

1 subdivision of any State that provides comparable or
2 greater rights and responsibilities than the rights
3 and responsibilities described in section 4(b);

4 (2) to prevent a State from enforcing a right-
5 to-work law that prohibits employers and labor orga-
6 nizations from negotiating provisions in a labor
7 agreement that require union membership or pay-
8 ment of union fees as a condition of employment;

9 (3) to preempt or limit any State law in effect
10 on the date of enactment of this Act that provides
11 for the rights and responsibilities described in sec-
12 tion 4(b) solely because such State law permits an
13 employee to appear on the employee's own behalf
14 with respect to the employee's employment relations
15 with the fire and EMS agency involved;

16 (4) to prohibit a State from exempting from
17 coverage under this Act a political subdivision of the
18 State that has a population of less than 5,000 or
19 that employs less than 25 full-time employees, in-
20 cluding each individual employed by the political
21 subdivision, except any individual elected by popular
22 vote or appointed to serve on a board or commission;
23 or

24 (5) to preempt or limit the laws or ordinances
25 of any State or political subdivision of a State that

1 provide for the rights and responsibilities described
2 in section 4(b) solely because such law or ordinance
3 does not require bargaining with respect to pension
4 or retirement.

5 (b) COMPLIANCE.—

6 (1) ACTIONS OF STATES.—Nothing in this Act
7 or the regulations promulgated under this Act shall
8 be construed to require a State to rescind or pre-
9 empt the laws or ordinances of any of the State’s
10 political subdivisions if such laws provide rights and
11 responsibilities for fire and EMS personnel that are
12 comparable to or greater than the rights and respon-
13 sibilities described in section 4(b).

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

17 (A) the laws or ordinances of any State or
18 political subdivision of a State, if such laws pro-
19 vide collective bargaining rights for fire and
20 EMS personnel that are comparable to or
21 greater than the rights enumerated in section
22 4(b);

23 (B) the laws or ordinances of any State or
24 political subdivision of a State that provide for
25 the rights and responsibilities described in sec-

1 tion 4(b) with respect to certain categories of
2 fire and EMS personnel covered by this Act
3 solely because such rights and responsibilities
4 have not been extended to other categories of
5 fire and EMS personnel covered by this Act; or

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

16 (3) LIMITED ENFORCEMENT POWER.—In the
17 case of a law described in paragraph (2)(B), the Au-
18 thority shall only exercise the powers provided in
19 section 5 with respect to those categories of fire and
20 EMS personnel who have not been afforded the
21 rights and responsibilities described in section 4(b).

22 (4) EXCLUSIVE ENFORCEMENT PROVISION.—
23 Notwithstanding any other provision of the Act, and
24 in the absence of a waiver of a State’s sovereign im-
25 munity, the Authority shall have the exclusive power

1 to enforce the provisions of this Act with respect to
2 employees of a State.

3 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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