

115TH CONGRESS  
2D SESSION

# S. 2845

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

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IN THE SENATE OF THE UNITED STATES

MAY 15, 2018

Ms. BALDWIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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”.

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

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

9 (1) Labor-management relationships and part-  
10 nerships are based on trust, mutual respect, open

1 communication, bilateral consensual problem solving,  
2 and shared accountability. Labor-management co-  
3 operation fully utilizes the strengths of both parties  
4 to best serve the interests of the public, operating as  
5 a team, to carry out the public safety mission in a  
6 quality work environment. In many public safety  
7 agencies, it is the union that provides the institu-  
8 tional stability as elected leaders and appointees  
9 come and go.

10 (2) State and local public safety officers play an  
11 essential role in the efforts of the United States to  
12 detect, prevent, and respond to terrorist attacks, and  
13 to respond to natural disasters, hazardous materials,  
14 and other mass casualty incidents. State and local  
15 public safety officers, as first responders, are a com-  
16 ponent of our Nation's National Incident Manage-  
17 ment System, developed by the Department of  
18 Homeland Security to coordinate response to and re-  
19 covery from terrorism, major natural disasters, and  
20 other major emergencies. Public safety employer-em-  
21 ployee cooperation is essential in meeting these  
22 needs and is, therefore, in the National interest.

23 (3) The Federal Government needs to encour-  
24 age conciliation, mediation, and arbitration to aid  
25 and encourage employers and the representatives of

1 their employees to reach and maintain agreements  
2 concerning rates of pay, hours, and working condi-  
3 tions, and to make all reasonable efforts through ne-  
4 gotiations to settle their differences by mutual agree-  
5 ment reached through collective bargaining or by  
6 such methods as may be provided for in any applica-  
7 ble agreement for the settlement of disputes.

8 (4) The absence of adequate cooperation be-  
9 tween public safety employers and employees has im-  
10 plications for the security of employees and can af-  
11 fect interstate and intrastate commerce. The lack of  
12 such labor-management cooperation can detrimen-  
13 tally impact the upgrading of law enforcement, fire,  
14 and emergency medical services of local commu-  
15 nities, the health and well-being of public safety offi-  
16 cers, and the morale of law enforcement, fire, and  
17 EMS departments. Additionally, these factors could  
18 have significant commercial repercussions. Moreover,  
19 providing minimal standards for collective bar-  
20 gaining negotiations in the public safety sector can  
21 prevent industrial strife between labor and manage-  
22 ment that interferes with the normal flow of com-  
23 merce.

24 (5) Many States and localities already provide  
25 public safety officers with collective bargaining

1 rights comparable to or greater than the rights and  
2 responsibilities set forth in this Act, and such State  
3 and local laws should be respected.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

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

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

14 (A) is designated as confidential; and

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

18 (3) **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 (4) **EMPLOYER; PUBLIC SAFETY AGENCY; PUB-**  
25 **LIC SAFETY EMPLOYER.**—The terms “employer”,

1 “public safety agency”, and “public safety em-  
2 ployer” mean any State, or political subdivision of a  
3 State, that employs public safety officers.

4 (5) FIREFIGHTER.—The term “firefighter” has  
5 the meaning given the term “employee in fire protec-  
6 tion activities” in section 3(y) of the Fair Labor  
7 Standards Act of 1938 (29 U.S.C. 203(y)).

8 (6) LABOR ORGANIZATION.—The term “labor  
9 organization” means an organization of any kind, in  
10 which employees participate and which exists for the  
11 purpose, in whole or in part, of dealing with employ-  
12 ers concerning grievances, conditions of employment,  
13 and related matters.

14 (7) LAW ENFORCEMENT OFFICER.—The term  
15 “law enforcement officer” has the meaning given  
16 such term in section 1204 of the Omnibus Crime  
17 Control and Safe Streets Act of 1968 (34 U.S.C.  
18 10284).

19 (8) MANAGEMENT EMPLOYEE.—The term  
20 “management employee” has the meaning given  
21 such term under applicable State law in effect on  
22 the date of enactment of this Act. If no such State  
23 law is in effect, the term means an individual em-  
24 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 (9) PERSON.—The term “person” means an in-  
4 dividual or a labor organization.

5 (10) PUBLIC SAFETY OFFICER.—The term  
6 “public safety officer”—

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

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

20 (12) SUBSTANTIALLY PROVIDES.—The term  
21 “substantially provides”, when used with respect to  
22 the rights and responsibilities described in section  
23 4(b), means comparable to or greater than each  
24 right and responsibility described in such section.

1           (13) SUPERVISORY EMPLOYEE.—The term “su-  
 2           pervisory employee” has the meaning given such  
 3           term under applicable State law in effect on the date  
 4           of enactment of this Act. If no such State law is in  
 5           effect, the term means an individual, employed by a  
 6           public safety employer, who—

7                   (A) has the authority in the interest of the  
 8                   employer to hire, direct, assign, promote, re-  
 9                   ward, transfer, furlough, lay off, recall, sus-  
 10                  pend, discipline, or remove public safety offi-  
 11                  cers, to adjust their grievances, or to effectively  
 12                  recommend such action, if the exercise of the  
 13                  authority is not merely routine or clerical in na-  
 14                  ture but requires the consistent exercise of  
 15                  independent judgment; and

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

18 **SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBIL-**  
 19 **ITIES.**

20           (a) DETERMINATION.—

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

1           (2) CONSIDERATION OF ADDITIONAL OPIN-  
2           IONS.—In making the determination described in  
3           paragraph (1), the Authority shall consider the opin-  
4           ions of affected employers and labor organizations.  
5           In the case where the Authority is notified by an af-  
6           fected employer and labor organization that both  
7           parties agree that the law applicable to such em-  
8           ployer and labor organization substantially provides  
9           for the rights and responsibilities described in sub-  
10          section (b), the Authority shall give such agreement  
11          weight to the maximum extent practicable in making  
12          the Authority's determination under this subsection.

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

18          (4) SUBSEQUENT DETERMINATIONS.—

19                (A) IN GENERAL.—A determination made  
20                pursuant to paragraph (1) shall remain in ef-  
21                fect unless and until the Authority issues a sub-  
22                sequent determination, in accordance with the  
23                procedures set forth in subparagraph (B).

24                (B) PROCEDURES FOR SUBSEQUENT DE-  
25                TERMINATIONS.—Upon establishing that a ma-



1           terial change in State law or its interpretation  
2           has occurred, an employer or a labor organiza-  
3           tion may submit a written request for a subse-  
4           quent determination. If satisfied that a material  
5           change in State law or its interpretation has oc-  
6           curred, the Authority shall issue a subsequent  
7           determination not later than 30 days after re-  
8           ceipt of such request.

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

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

23                (1) Granting public safety officers the right to  
24                form and join a labor organization, which may ex-  
25                clude management employees, supervisory employ-

1 ees, and confidential employees, that is, or seeks to  
2 be, recognized as the exclusive bargaining represent-  
3 ative of such employees.

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

10 (3) Providing for the right to bargain over  
11 hours, wages, and terms and conditions of employ-  
12 ment.

13 (4) Providing for binding interest arbitration as  
14 a mechanism to resolve an impasse in collective bar-  
15 gaining negotiations.

16 (5) Requiring enforcement of all rights, respon-  
17 sibilities, and protections enumerated in this section,  
18 and of any written contract or memorandum of un-  
19 derstanding between a labor organization and a pub-  
20 lic safety employer, through—

21 (A) a State administrative agency, if the  
22 State so chooses; or

23 (B) any court of competent jurisdiction.

24 (c) COMPLIANCE WITH REQUIREMENTS.—If the Au-  
25 thority determines, acting pursuant to its authority under

1 subsection (a), that a State substantially provides rights  
2 and responsibilities described in subsection (b), then this  
3 Act shall not preempt State law.

4 (d) FAILURE TO MEET REQUIREMENTS.—

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

12 (A) the date that is 2 years after the date  
13 of enactment of this Act;

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

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

1           (2) PARTIAL FAILURE.—If the Authority makes  
2           a determination that a State does not substantially  
3           provide for the rights and responsibilities described  
4           in subsection (b) solely because the State law sub-  
5           stantially provides for such rights and responsibil-  
6           ities for certain categories of public safety officers  
7           covered by the Act but not others, the Authority  
8           shall identify those categories of public safety offi-  
9           cers that shall be subject to the regulations and pro-  
10          cedures described in section 5, pursuant to section  
11          8(b)(3) and beginning on the appropriate date de-  
12          scribed in paragraph (1), and those categories of  
13          public safety officers that shall remain solely subject  
14          to State law with respect to the rights and respon-  
15          sibilities described in subsection (b).

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

17          (a) IN GENERAL.—Not later than 1 year after the  
18          date of enactment of this Act, the Authority shall issue  
19          regulations, in accordance with the rights and responsibil-  
20          ities described in section 4(b), establishing collective bar-  
21          gaining procedures for employers and public safety officers  
22          in States where the Authority has determined, acting pur-  
23          suant to section 4(a), do not substantially provide for such  
24          rights and responsibilities.

1 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-  
2 THORITY.—The Authority, to the extent provided in this  
3 Act and in accordance with regulations prescribed by the  
4 Authority, shall—

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

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

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

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

15 (5) resolve exceptions to the awards of arbitra-  
16 tors;

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

22 (7) take such other actions as are necessary  
23 and appropriate to effectively administer this Act,  
24 including issuing subpoenas requiring the attendance  
25 and testimony of witnesses and the production of

1 documentary or other evidence from any place in the  
2 United States, and administering oaths, taking or  
3 ordering the taking of depositions, ordering re-  
4 sponses to written interrogatories, and receiving and  
5 examining witnesses.

6 (c) ENFORCEMENT.—

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

14 (2) PRIVATE RIGHT OF ACTION.—Unless the  
15 Authority has filed a petition for enforcement as  
16 provided in paragraph (1), any party has the right  
17 to file suit in any appropriate district court of the  
18 United States to enforce compliance with the regula-  
19 tions issued by the Authority pursuant to this sec-  
20 tion, and to enforce compliance with any order  
21 issued by the Authority pursuant to this section.  
22 The right provided by this subsection to bring a suit  
23 to enforce compliance with any order issued by the  
24 Authority pursuant to this section shall terminate  
25 upon the filing of a petition seeking the same relief

1 by the Authority. Enforcement against a State shall  
2 be pursuant to section 8(b)(4).

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

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

11 (b) NO PREEMPTION.—Nothing in this section shall  
12 be construed to preempt any law of any State or political  
13 subdivision of any State with respect to strikes by public  
14 safety officers.

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

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

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

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

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

9 (2) to prevent a State from enforcing a right-  
10 to-work law that prohibits employers and labor orga-  
11 nizations from negotiating provisions in a labor  
12 agreement that require labor organization member-  
13 ship or payment of labor organization fees as a con-  
14 dition of employment;

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

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



1           (5) to preempt or limit the laws or ordinances  
2           of any State or political subdivision of a State that  
3           provide for the rights and responsibilities described  
4           in section 4(b) solely because such law or ordinance  
5           does not require bargaining with respect to pension,  
6           retirement, or health benefits.

7 For purposes of paragraph (4), the term “employee” in-  
8 cludes each and every individual employed by the political  
9 subdivision except any individual elected by popular vote  
10 or appointed to serve on a board or commission.

11           (b) COMPLIANCE.—

12           (1) ACTIONS OF STATES.—Nothing in this Act  
13           or the regulations promulgated under this Act shall  
14           be construed to require a State to rescind or pre-  
15           empt the laws or ordinances of any of the State’s  
16           political subdivisions if such laws provide rights and  
17           responsibilities for public safety officers that are  
18           comparable to or greater than the rights and respon-  
19           sibilities described in section 4(b).

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

23                   (A) the laws or ordinances of any State or  
24                   political subdivision of a State, if such laws pro-  
25                   vide collective bargaining rights for public safe-

1 ty officers that are comparable to or greater  
2 than the rights enumerated in section 4(b);

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

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

21 (3) LIMITED ENFORCEMENT POWER.—In the  
22 case of a law described in paragraph (2)(B), the Au-  
23 thority shall only exercise the powers provided in  
24 section 5 with respect to those categories of public

1 safety officers who have not been afforded the rights  
2 and responsibilities described in section 4(b).

3 (4) EXCLUSIVE ENFORCEMENT PROVISION.—

4 Notwithstanding any other provision of this Act, and  
5 in the absence of a waiver of a State's sovereign im-  
6 munity, the Authority shall have the exclusive power  
7 to enforce the provisions of this Act with respect to  
8 employees of a State.

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

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

○