

116TH CONGRESS
1ST SESSION

H. R. 3463

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2019

Mr. CARTWRIGHT (for himself, Ms. SCHAKOWSKY, Ms. NORTON, Ms. OMAR, Ms. DEAN, Mr. SCOTT of Virginia, Ms. WILSON of Florida, Mr. ESPAILLAT, Mr. HIGGINS of New York, Mr. DESAULNIER, Mr. PALLONE, Ms. BONAMICI, Mr. NORCROSS, Mr. COHEN, Mr. SIRES, Ms. KAPTUR, Mr. SABLAN, Mr. RASKIN, Ms. FUDGE, Ms. JAYAPAL, Mr. POCAN, Mr. SMITH of Washington, Ms. FINKENAUER, Mr. NADLER, Mrs. BEATTY, Mr. MCGOVERN, Mrs. HAYES, and Mrs. TRAHAN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, 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 “Public Service Free-
5 dom to Negotiate Act of 2019”.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act:

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

5 (2) APPROPRIATE UNIT.—The term “appro-
6 priate unit” means a bargaining unit of public em-
7 ployees or supervisory employees that share a com-
8 munity of interest, have a bargaining history or his-
9 tory of prior organization, and represents the desires
10 of employees seeking representation.

11 (3) COLLECTIVE BARGAINING.—The term “col-
12 lective bargaining”, used with respect to public em-
13 ployees, supervisory employees, and public employ-
14 ers, means the performance of the mutual obligation
15 of the representative of a public employer and the
16 exclusive representative of public and supervisory
17 employees in an appropriate unit of the employer to
18 meet at reasonable times and to consult and bargain
19 in a good-faith effort to reach agreement with re-
20 spect to wages, hours, and other terms and condi-
21 tions of employment affecting such employees and to
22 execute, if requested by either party, a written docu-
23 ment incorporating any collective bargaining agree-
24 ment reached, but the obligation referred to in this
25 paragraph does not compel either party to agree to
26 a proposal or to make a concession (as described in

1 section 8(d) of the National Labor Relations Act (29
2 U.S.C. 158(d)).

3 (4) CONFIDENTIAL EMPLOYEE.—The term
4 “confidential employee” means an employee of a
5 public employer who acts in a confidential capacity
6 with respect to an individual who formulates or ef-
7 fectuates management policies in the field of labor-
8 management relations.

9 (5) EMERGENCY SERVICES EMPLOYEE.—The
10 term “emergency services employee” means—

11 (A) a public employee providing out-of-hos-
12 pital emergency medical care, including an
13 emergency medical technician, paramedic, or
14 first responder; or

15 (B) a public employee providing other serv-
16 ices in response to emergencies that have the
17 potential to cause death or serious bodily in-
18 jury, including an employee in fire protection
19 activities (as defined in section 3 of the Fair
20 Labor Standards Act of 1938 (29 U.S.C. 203)).

21 (6) EMPLOY.—The term “employ” has the
22 meaning given the term in section 3 of the Fair
23 Labor Standards Act of 1938 (29 U.S.C. 203).

24 (7) LABOR ORGANIZATION.—The term “labor
25 organization” means any organization of any kind

1 that is not under the control directly or indirectly by
2 a public employer in which such employees partici-
3 pate and which exists for the purpose, in whole or
4 in part, of dealing with public employers concerning
5 grievances, labor disputes, wages, rates of pay, hours
6 of employment, or conditions of work.

7 (8) LAW.—The term “law”, used with respect
8 to a State or a political subdivision thereof, includes
9 the application of the laws of such State or such po-
10 litical subdivision, including any regulations or ordi-
11 nances issued by such State or such political subdivi-
12 sion.

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

18 (10) MANAGEMENT EMPLOYEE.—The term
19 “management employee” means an individual em-
20 ployed by a public employer in a position the duties
21 and responsibilities of which require the individual to
22 formulate or determine the policies of the employer.

23 (11) COVERED PERSON.—The term “covered
24 person” means an individual or a labor organization.

25 (12) PUBLIC EMPLOYEE.—

1 (A) IN GENERAL.—The term “public em-
2 ployee”—

3 (i) means an individual, employed by
4 a public employer, who in any workweek is
5 engaged in commerce or is employed in an
6 enterprise engaged in commerce;

7 (ii) includes an individual who is tem-
8 porarily transferred to a supervisory or
9 management position; and

10 (iii) does not include a supervisory
11 employee, management employee, or con-
12 fidential employee, or an elected official.

13 (B) COMMERCE; ENTERPRISE ENGAGED IN
14 COMMERCE.—For the purpose of this para-
15 graph, the terms “commerce” and “enterprise
16 engaged in commerce” have the meanings given
17 in section 3 of the Fair Labor Standards Act
18 of 1938 (29 U.S.C. 203).

19 (13) PUBLIC EMPLOYER.—The term “public
20 employer” means any of the following that employs
21 individuals:

22 (A) A State or the political subdivision of
23 a State, including a territory or political sub-
24 division of a territory.

1 (B) Any authority, agency, school district,
2 board or other entity controlled and operated by
3 an entity described in subparagraph (A).

4 (14) STATE.—The term “State” means each of
5 the several States of the United States, the District
6 of Columbia, and any territory or possession of the
7 United States (as defined in section 3 of the Fair
8 Labor Standards Act of 1938 (29 U.S.C. 203)).

9 (15) SUBSTANTIALLY PROVIDES.—The term
10 “substantially provides”, used with respect to the
11 rights and procedures described in section 3(b),
12 means providing rights and procedures that are
13 equivalent to or greater than each of the rights and
14 procedures described in such section.

15 (16) SUPERVISORY EMPLOYEE.—

16 (A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term “supervisory em-
18 ployee” means an individual, employed by a
19 public employer, who in any workweek is en-
20 gaged in commerce or is employed in an enter-
21 prise engaged in commerce and who—

22 (i) has the authority in the interest of
23 the employer, if the exercise of such au-
24 thority is not merely routine or clerical in

1 nature but requires the consistent exercise
2 of independent judgment, to—

3 (I) hire, promote, reward, trans-
4 fer, furlough, lay off, recall, suspend,
5 discipline, or remove public employees;

6 (II) adjust the grievances of pub-
7 lic employees; or

8 (III) effectively recommend any
9 action described in subclause (I) or
10 (II); and

11 (ii) devotes a majority of time at work
12 to exercising the authority under clause (i).

13 (B) COMMERCE; ENTERPRISE ENGAGED IN
14 COMMERCE.—For the purpose of this para-
15 graph, the terms “commerce” and “enterprise
16 engaged in commerce” have the meanings given
17 in section 3 of the Fair Labor Standards Act
18 of 1938 (29 U.S.C. 203).

19 (b) STATE LAW.—If any term defined in this section
20 has a substantially equivalent meaning to the term (or a
21 substantially equivalent term) under applicable State law
22 on the date of the enactment of this Act, such term (or
23 substantially equivalent term) and meaning under such
24 applicable State law shall apply with respect to the term
25 defined under this Act with respect to such State.

1 **SEC. 3. FEDERAL MINIMUM STANDARDS.**

2 (a) DETERMINATION.—

3 (1) IN GENERAL.—Not later than 180 days
4 after the date of enactment of this Act, the Author-
5 ity shall make a determination for each State as to
6 whether the laws of such State substantially provide
7 for each of the rights and procedures under sub-
8 section (b) and not later than 30 days after the en-
9 actment of this Act, the Authority shall establish
10 procedures for the implementation of this section.

11 (2) CONSIDERATION OF ADDITIONAL OPIN-
12 IONS.—In making the determination under para-
13 graph (1), the Authority shall consider the opinions
14 of affected public employees, supervisory employees,
15 labor organizations, and public employers. In the
16 case where the Authority is notified by an affected
17 public employer and labor organization that both
18 parties agree that the law applicable to such em-
19 ployer and labor organization substantially provides
20 for the rights and responsibilities described in sub-
21 section (b), the Authority shall give such agreement
22 weight to the maximum extent practicable in making
23 the Authority's determination under paragraph (1).

24 (3) LIMITED CRITERIA.—In making the deter-
25 mination described in paragraph (1), the Authority

1 may only consider the criteria described in sub-
2 section (b).

3 (4) SUBSEQUENT DETERMINATIONS.—

4 (A) IN GENERAL.—A determination made
5 pursuant to paragraph (1) shall remain in ef-
6 fect unless and until the Authority issues a sub-
7 sequent determination, in accordance with the
8 procedures set forth in subparagraph (B).

9 (B) REQUEST.—A public employee, super-
10 visory employee, public employer, or a labor or-
11 ganization may submit to the Authority a writ-
12 ten request for a subsequent determination with
13 respect to whether a material change of State
14 law has occurred.

15 (C) ISSUANCE.—If satisfied that a mate-
16 rial change in State law has occurred, the Au-
17 thority shall issue a subsequent determination
18 not later than 30 days after receipt of such re-
19 quest.

20 (5) JUDICIAL REVIEW.—Any covered person or
21 public employer aggrieved by a determination of the
22 Authority under this paragraph (1) may, during the
23 60-day period beginning on the date on which the
24 determination was made, petition any United States
25 Court of Appeals in the circuit in which the covered

1 person or public employer resides or transacts busi-
2 ness or in the Court of Appeals for the District of
3 Columbia Circuit, for judicial review. In any judicial
4 review of a determination made by the Authority de-
5 scribed in paragraph (1), the procedures contained
6 in subsections (c) and (d) of section 7123 of title 5,
7 United States Code, shall be followed.

8 (b) FEDERAL MINIMUM STANDARD.—The collective
9 bargaining rights and procedures under this subsection
10 are as follows:

11 (1) A right of public employees and supervisory
12 employees—

13 (A) to self-organization;

14 (B) to form, join, or assist a labor organi-
15 zation or to refrain from any such activity;

16 (C) to bargain collectively through rep-
17 resentatives of their own choosing; and

18 (D) to engage in other concerted activities
19 for the purpose of collective bargaining or other
20 mutual aid (including the filing of joint, class,
21 or collective legal claims) or protection.

22 (2) A requirement for public employers to—

23 (A) recognize the labor organization of its
24 public employees and supervisory employees
25 (freely chosen in an election by a majority of

1 such employees voting in the appropriate unit
2 or chosen by voluntary recognition if that meth-
3 od is permitted under State law) without re-
4 quiring an election to recertify a labor organiza-
5 tion that is already recognized as the represent-
6 ative of such employees unless not less than 30
7 percent of such employees in the appropriate
8 unit freely sign a petition to decertify such
9 labor organization—

10 (i) not earlier than the date that is 1
11 year after the date of the election (or after
12 a voluntary recognition if permitted under
13 State law) of the representative;

14 (ii) not earlier than 1 year after the
15 expiration of a valid collective bargaining
16 agreement;

17 (iii) not during the term of a valid col-
18 lective bargaining agreement (except as
19 permissible under clause (iv)); or

20 (iv) during the 30-day period begin-
21 ning on the date that is 90 days before the
22 end of a valid existing contract;

23 (B) collectively bargain with such recog-
24 nized labor organization; and

1 (C) commit any agreements with such rec-
2 cognized labor organization to writing in a con-
3 tract or memorandum of understanding.

4 (3) An interest impasse resolution mechanism
5 that includes a procedure for the settlement of griev-
6 ances (including fact-finding, mediation, arbitration)
7 which culminates in binding arbitration.

8 (4) Payroll deduction of labor organization fees
9 for any duly selected representative of public em-
10 ployees and supervisory employees pursuant to the
11 terms of an authorization executed by such public
12 employees to the extent permitted by law.

13 (5) The enforcement of all relevant rights and
14 protections provided by State law and enumerated in
15 this section, and of any written contract or memo-
16 randum of understanding between a labor organiza-
17 tion and a public employer, through—

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

20 (B) at the election of an aggrieved party,
21 the State courts; or

22 (C) in the case of an alleged violation, mis-
23 interpretation, or misapplication of the contract
24 or memorandum of understanding, a grievance

1 resolution procedure negotiated in such contract
2 or memorandum.

3 (c) COMPLIANCE WITH RIGHTS AND PROCE-
4 DURES.—If the Authority determines under subsection (a)
5 that the laws of a State substantially provide each of the
6 rights and procedures described in subsection (b), then
7 subsection (d) shall not apply.

8 (d) FAILURE TO SUBSTANTIALLY PROVIDE.—

9 (1) IN GENERAL.—If the Authority determines
10 under subsection (a) that the laws of a State do not
11 substantially provide for each of the rights and pro-
12 cedures described in subsection (b), then such State
13 shall be subject to the rules and activities of the Au-
14 thority under section 4 beginning on the later of—

15 (A) the date that is 2 years after the date
16 of enactment of this Act;

17 (B) the date that is the last day of the
18 first regular session of the legislature of the
19 State that begins after the date of the enact-
20 ment of this Act; or

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

1 gins after the date the Authority made the de-
2 termination.

3 (2) PARTIAL FAILURE.—If the Authority makes
4 a determination that a State does not substantially
5 provide for each of the rights and procedures de-
6 scribed in subsection (b) because the State fails to
7 substantially provide for all of such rights and pro-
8 cedures with respect to any public or supervisory
9 employees, the Authority shall identify—

10 (A) the categories of public or supervisory
11 employees of such State that shall be subject to
12 the rules and activities of the Authority under
13 section 4, pursuant to section 7(b)(3), begin-
14 ning on the applicable date under paragraph
15 (1);

16 (B) the categories of public employees and
17 supervisory employees of such State that shall
18 not be subject to the rules and activities of the
19 Authority under section 4;

20 (C) the categories of rights and procedures
21 described in subsection (b) for which the State
22 does not substantially provide for certain public
23 employees and supervisory employees; and

1 (D) the categories of rights and procedures
2 described in such subsection for which the State
3 substantially provides for all employees.

4 **SEC. 4. MINIMUM STANDARDS ADMINISTERED BY THE FED-**
5 **ERAL LABOR RELATIONS AUTHORITY.**

6 (a) IN GENERAL.—Not later than 1 year after the
7 date of enactment of this Act, the Authority shall issue
8 rules and take such actions that the Authority determines
9 appropriate to establish and administer collective bar-
10 gaining rights and procedures that substantially provide
11 for the rights and procedures described in section 3(b) for
12 States described in section 3(d).

13 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
14 THORITY.—In carrying out subsection (a), the Authority
15 shall—

16 (1) protect the right of public employees—

17 (A) to self-organization;

18 (B) to form, join, or assist any labor orga-
19 nization or to refrain from any such activity;

20 (C) to bargain collectively through rep-
21 resentatives of their own choosing; and

22 (D) to engage in other concerted activities
23 for the purpose of collective bargaining or other
24 mutual aid (including the filing of joint, class,
25 or collective legal claims) or protection;

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

6 (3) provide for the payroll deduction of labor
7 organization fees to any such duly elected exclusive
8 representative pursuant to the terms of an author-
9 ization executed by a public employee or supervisory
10 employee to the extent permitted by law;

11 (4) determine the appropriateness of units for
12 labor organization representation;

13 (5) require public employers to—

14 (A) recognize the labor organization of its
15 public employees or supervisory employees
16 (freely chosen by a majority of such employees
17 voting in the appropriate unit) as the exclusive
18 representative of such employees;

19 (B) bargain in good faith with such labor
20 organization concerning public or supervisory
21 employees' terms and conditions of employment,
22 which shall include a procedure for the settle-
23 ment of grievances culminating in binding arbi-
24 tration in any agreement and a procedure for

1 resolving any impasses in collective bargaining;
2 and

3 (C) commit any agreements to writing in a
4 contract or memorandum of understanding;

5 (6) prohibit practices which interfere with, co-
6 erce, or intimidate public or supervisory employees
7 in the exercise of rights guaranteed in paragraph (1)
8 or regulations issued thereunder;

9 (7) conduct hearings and resolve complaints
10 concerning violations of any rule or order issued by
11 the Authority pursuant to this Act;

12 (8) resolve exceptions to the awards of arbitra-
13 tors that violate or exceed the scope of public policy
14 of this Act; and

15 (9) take such other actions as are necessary
16 and appropriate to effectively administer this Act,
17 including issuing subpoenas requiring the attendance
18 and testimony of witnesses and the production of
19 documentary or other evidence from any place in the
20 United States, administering oaths, taking or order-
21 ing the taking of depositions, ordering responses to
22 written interrogatories, and receiving and examining
23 witnesses.

24 (c) ENFORCEMENT.—

1 (1) IN GENERAL.—The Authority may issue an
2 order directing compliance by any covered person or
3 public employer found to be in violation of this sec-
4 tion, and may petition any United States Court of
5 Appeals with jurisdiction over the parties, or the
6 United States Court of Appeals for the District of
7 Columbia Circuit, to enforce any such final orders
8 issued pursuant to this section or pursuant to rules
9 issued under this section, and for appropriate tem-
10 porary relief or a restraining order. Any covered per-
11 son or public employer aggrieved by an order issued
12 by the Authority under this section may, during the
13 60-day period beginning on the date on which the
14 order was issued petition any United States Court of
15 Appeals in the circuit which the covered person or
16 public employer resides or transacts business or in
17 the Court of Appeals for the District of Columbia
18 Circuit, for judicial review. Any petition or appeal
19 under this section shall be conducted in accordance
20 with subsections (c) and (d) of section 7123 of title
21 5, United States Code.

22 (2) PRIVATE RIGHT OF ACTION.—

23 (A) FILING A CIVIL ACTION.—Unless the
24 Authority has filed an order of enforcement as
25 provided in paragraph (1), any party may, after

1 the 180-day period following the filing of a
2 charge with the Authority pursuant to the rules
3 of the Authority under this section, file a civil
4 action against any named State administrator
5 in an appropriate district court of the United
6 States to enjoin such administrator to enforce
7 compliance—

8 (i) with this Act or the rules issued by
9 the Authority under this section; or

10 (ii) to enforce compliance with any
11 order issued by the Authority.

12 (B) TIMING.—Any civil action brought
13 under subparagraph (A) must be brought not
14 later than the earlier of—

15 (i) the date that is 180 days after the
16 expiration of the 180-day period in sub-
17 paragraph (A); or

18 (ii) the date that is 180 days after the
19 date that the Authority dismisses a charge
20 described in subparagraph (A).

21 (C) NOTICE.—The party shall provide no-
22 tice of the Federal lawsuit to the Authority on
23 the date of the filing of the civil action in Fed-
24 eral court.

1 (D) JURISDICTION AND ATTORNEYS'
2 FEES.—A district court shall have jurisdiction
3 over the civil action filed under subparagraph
4 (A) without regard to the amount in con-
5 troversy or the citizenship of the parties and
6 may award reasonable attorneys' fees.

7 **SEC. 5. LOCKOUTS AND EMPLOYEE STRIKES PROHIBITED**
8 **WHEN EMERGENCY OR PUBLIC SAFETY SERV-**
9 **ICES IMPERILED.**

10 (a) IN GENERAL.—Subject to subsection (b), any em-
11 ployer, emergency services employee, or law enforcement
12 officer subject to the rules and activities of the Authority
13 under section 4 may not engage in a lockout, strike, or
14 any other organized job action of which a reasonably prob-
15 able result is a measurable disruption of the delivery of
16 emergency or public safety services. No labor organization
17 may cause or attempt to cause a violation of this sub-
18 section.

19 (b) NO PREEMPTION.—Nothing in this section shall
20 be construed to preempt any law of any State or political
21 subdivision of any State with respect to strikes by emer-
22 gency services employees or law enforcement officers.

1 **SEC. 6. EXISTING COLLECTIVE BARGAINING UNITS AND**
2 **AGREEMENTS.**

3 The enactment of this Act shall not invalidate any
4 certification, recognition, result of an election, collective
5 bargaining agreement, or memorandum of understanding
6 that—

7 (1) has been issued, approved, or ratified by
8 any public employee relations board or commission,
9 or by any State or political subdivision or an agent
10 or management official of such State or political
11 subdivision; and

12 (2) is in effect on the day before the date of en-
13 actment of this Act.

14 **SEC. 7. EXCEPTIONS.**

15 (a) IN GENERAL.—The Authority shall not make a
16 determination under section 3(a) that the laws of a State
17 do not substantially provide for the rights and procedures
18 under section 3(b) on the basis that relevant State laws—

19 (1) permit a public or supervisory employee to
20 appear on the employee's own behalf with respect to
21 the relationship of the public employee with the pub-
22 lic employer involved;

23 (2) do not cover public or supervisory employees
24 of the State militia or national guard; or

25 (3) do not apply to a political subdivision of a
26 State if—

1 (A) such political subdivision has a popu-
2 lation of fewer than 5,000 people or employs
3 fewer than 25 public employees; and

4 (B) the State in which such political sub-
5 division is located notifies the Authority that
6 such subdivision is exempt from such laws be-
7 fore the date on which the Authority makes the
8 determination.

9 (b) COMPLIANCE.—

10 (1) ACTIONS OF STATES.—Nothing in this Act
11 shall be construed to require a State to rescind or
12 preempt the laws of any political subdivision of the
13 State if such laws substantially provide for the
14 rights and procedures described in section 3(b).

15 (2) ACTIONS OF THE DISTRICT OF COLUM-
16 BIA.—Nothing in this Act or in the rules issued
17 under this Act shall be construed—

18 (A) to require the District of Columbia to
19 rescind—

20 (i) section 501 of the District of Co-
21 lumbia Government Comprehensive Merit
22 Personnel Act of 1978 (1-605.01, D.C. Of-
23 ficial Code), establishing the Public Em-
24 ployee Relations Board of the District of
25 Columbia; or

1 (ii) section 502 of such Act (1-605.02,
2 D.C. Official Code), establishing the power
3 of the Board;

4 (B) to preempt the laws described in sub-
5 paragraph (A); or

6 (C) to limit or alter the powers of the gov-
7 ernment of the District of Columbia pursuant
8 to the District of Columbia Home Rule Act.

9 (3) ACTIONS OF THE AUTHORITY.—Nothing in
10 this Act shall be construed to preempt—

11 (A) the laws of any State or political sub-
12 division of a State that substantially provide for
13 the rights and procedures described in section
14 3(b);

15 (B) the laws of any State or political sub-
16 division of a State that substantially provide for
17 the rights and procedures described in section
18 3(b), solely because such laws provide that a
19 contract or memorandum of understanding be-
20 tween a public employer and a labor organiza-
21 tion must be presented to a legislative body as
22 part of the process for approving such contract
23 or memorandum of understanding; or

24 (C) the laws of any State or political sub-
25 division of a State that permit or require a pub-

1 lic employer to recognize a labor organization
2 on the basis of signed authorizations executed
3 by employees designating the labor organization
4 as their representative.

5 (4) LIMITED ENFORCEMENT POWER.—In the
6 case of a law described in section 3(d)(2), the Au-
7 thority shall only exercise the authority under sec-
8 tion 4 with respect to the categories of public or su-
9 pervisory employees for whom State law does not
10 substantially provide the rights and procedures de-
11 scribed in section 3(b).

12 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated such sums
14 as may be necessary to carry out this Act.

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