



Section-by-Section

COMMITTEE ON EDUCATION & LABOR

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The Hon. Robert C. "Bobby" Scott • Chairman

Public Service Freedom to Negotiate Act of 2019

Short Title

The title of the bill is the *Public Service Freedom to Negotiate Act of 2019*.

Section 3. Federal Minimum Standards

This bill guarantees public and supervisory employees of state, territorial, and local governments the right:

- To form, join, or assist a union, to bargain collectively, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid (including the filing of joint, class or collective legal claims) or protection;
- To have their union recognized by their public employer if the union is freely chosen by a majority of employees, to bargain with the employer through the union, and to commit their collective-bargaining agreement to writing;
- To be free from forced recertification elections of their already-recognized representative and decertification of their chosen representative within one year of an election or the expiration of a valid collective-bargaining agreement;
- To have a procedure for resolving impasses in collective bargaining culminating in binding arbitration; and
- To authorize employers to deduct fees to the union from their payroll when employees consent to the extent permitted by law.

To ensure these rights, the Federal Labor Relations Authority (FLRA), which administers the Federal Service Labor-Management Statute covering the collective bargaining rights of federal employees, must make a determination as to whether each state substantially provides for the above-listed rights and procedures within 180 days of the enactment of this Act. In making this determination, the FLRA shall consider views submitted by affected public and supervisory employees, labor organizations, and public employers.

Any determination by the FLRA will remain in effect until it issues a subsequent decision. The FLRA must issue a new determination whenever a public or supervisory employee, labor organization, or public employer establishes to the FLRA that a state has materially changed its law or interpretation of the law. Persons or public employers aggrieved by a FLRA determination may seek judicial review by a U.S. Court of Appeals.

However, if the FLRA makes a determination that a state does not substantially provide for the rights and procedures in Section 3(b), then that state will be subject to the regulations in this Section, beginning on the later of:

- (A) The date that is two years after the date of enactment of this Act; or
- (B) The date that is the last day of the first regular session of the legislature of the state that begins after the date of the enactment of this Act.

Section 4. Minimum Standards Administered by the Federal Labor Relations Authority

One year after the date of enactment, the FLRA shall issue regulations establishing collective bargaining procedures for employers, labor organizations, and public and supervisory employees in states that the FLRA has determined do not substantially provide for the rights and procedures outlined in Section 3. Such rules shall:

- Protect the right to form, join, or assist any union, to refrain from such activity, to bargain collectively, and to engage in other concerted activities for collective bargaining or other mutual aid or protection (including the filing of joint, class or collective legal claims);
- Supervise or conduct elections to determine whether a union has been selected as the exclusive representative by a majority of the employees voting in such election in an appropriate unit;
- Provide for the payroll deduction of labor organization fees pursuant to the terms of an authorization executed by an employee to the extent permitted by law;
- Determine the appropriateness of units of employees to be represented by unions;
- Require public employers to recognize unions freely selected by employees, to bargain in good faith with the union regarding terms and conditions of employment, and for the parties to commit any agreements in writing;
- Resolve impasses in collective bargaining with a procedure that culminates in binding arbitration;
- Prohibit practices that interfere with the exercise of employee rights;
- Conduct hearings and resolve complaints regarding violations of FLRA regulations or orders;
- Resolve challenges to arbitration awards that violate or exceed the scope of public policy of this Act; and
- Take other such actions as are necessary to administer the Public Service Freedom to Negotiate Act.

In addition, any party may file a civil action seeking an injunction for violation of this Act or regulations issued pursuant to this Act if the FLRA has not acted within 180 days. And any party aggrieved by an order of the FLRA may file an appeal of the agency decision in federal court.

Section 5. Lockouts and Employee Strikes Prohibited when Emergency or Public Safety Services Imperiled

Public employers, emergency services employees, and law enforcement officers may not engage in any lockout, strike, or other organized job action where the reasonably probable result is the measurable disruption of the delivery of emergency or public safety services. The Act does not preempt states from enacting any laws regarding strikes by emergency services employees or law enforcement officers.

Section 6. Existing Collective Bargaining Units and Agreements

Nothing in this bill shall invalidate any current certification or recognition of a union, any collective bargaining agreement, or any memorandum of understanding that is in effect before the date of enactment of this Act.

Section 7. Exceptions

The FLRA will not intervene:

- If the state maintains standards that meet or exceed those requirements in Section 3 regarding public and supervisory employees right to form a union and collectively bargain;
- Solely because a state law permits public and supervisory employees to appear on the employee's own behalf with respect to that employee's own employment relations;
- Solely because a state excludes from its coverage public or supervisory employees of a state militia or national guard; and
- If a state's political subdivision has a population of fewer than 5,000 people or employs fewer than 25 employees, and the FLRA is provided such notice.

The FLRA will not:

- Preempt, or require the District of Columbia to rescind, the law establishing the D.C. Public Employee Relations Board, or to limit or alter the D.C. government's powers under the District of Columbia Home Rule Act;
- Preempt a state law that substantially provides for the rights and procedures in Section 3, solely because the law requires an agreement between a public employer and union to be presented to a legislative body as part of the process for approving the agreement; or
- Preempt any state law that allows or requires a public employer to recognize the union on the basis of cards signed by the majority of employees.

Section 8. Authorization of Appropriations

The bill authorizes appropriations of sums necessary to carry out its provisions.