

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect as if included in section
3 2503 of Public Law 111–148.

4 CHAPTER 4

5 PUBLIC SAFETY EMPLOYER-EMPLOYEE

6 COOPERATION ACT

7 SHORT TITLE

8 SEC. 4401. This chapter may be cited as the “Public
9 Safety Employer-Employee Cooperation Act of 2010”.

10 DECLARATION OF PURPOSE AND POLICY

11 SEC. 4402. The Congress declares that the following
12 is the policy of the United States:

13 (1) Labor-management relationships and part-
14 nerships are based on trust, mutual respect, open
15 communication, bilateral consensual problem solving,
16 and shared accountability. Labor-management co-
17 operation fully utilizes the strengths of both parties
18 to best serve the interests of the public, operating as
19 a team, to carry out the public safety mission in a
20 quality work environment. In many public safety
21 agencies, it is the union that provides the institu-
22 tional stability as elected leaders and appointees
23 come and go.

24 (2) State and local public safety officers play an
25 essential role in the efforts of the United States to
26 detect, prevent, and respond to terrorist attacks, and

1 to respond to natural disasters, hazardous materials,
2 and other mass casualty incidents. State and local
3 public safety officers, as first responders, are a com-
4 ponent of our Nation's National Incident Manage-
5 ment System, developed by the Department of
6 Homeland Security to coordinate response to and re-
7 covery from terrorism, major natural disasters, and
8 other major emergencies. Public safety employer-em-
9 ployee cooperation is essential in meeting these
10 needs and is, therefore, in the National interest.

11 (3) The Federal Government needs to encour-
12 age conciliation, mediation, and voluntary arbitra-
13 tion to aid and encourage employers and the rep-
14 resentatives of their employees to reach and main-
15 tain agreements concerning rates of pay, hours, and
16 working conditions, and to make all reasonable ef-
17 forts through negotiations to settle their differences
18 by mutual agreement reached through collective bar-
19 gaining or by such methods as may be provided for
20 in any applicable agreement for the settlement of
21 disputes.

22 (4) The absence of adequate cooperation be-
23 tween public safety employers and employees has im-
24 plications for the security of employees and can af-
25 fect interstate and intrastate commerce. The lack of

1 such labor-management cooperation can detrimen-
2 tally impact the upgrading of police and fire services
3 of local communities, the health and well-being of
4 public safety officers, and the morale of the fire and
5 police departments. Additionally, these factors could
6 have significant commercial repercussions. Moreover,
7 providing minimal standards for collective bar-
8 gaining negotiations in the public safety sector can
9 prevent industrial strife between labor and manage-
10 ment that interferes with the normal flow of com-
11 merce.

12 (5) Many States and localities already provide
13 public safety officers with collective bargaining
14 rights comparable to or greater than the rights and
15 responsibilities set forth in this chapter, and such
16 State and local laws should be respected.

17 DEFINITIONS

18 SEC. 4403. In this chapter:

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

21 (2) CONFIDENTIAL EMPLOYEE.—The term
22 “confidential employee” has the meaning given such
23 term under applicable State law on the date of en-
24 actment of this Act. If no such State law is in effect,
25 the term means an individual, employed by a public
26 safety employer, who—

1 (A) is designated as confidential; and

2 (B) is an individual who routinely assists,
3 in a confidential capacity, supervisory employ-
4 ees and management employees.

5 (3) EMERGENCY MEDICAL SERVICES PER-
6 SONNEL.—The term “emergency medical services
7 personnel” means an individual who provides out-of-
8 hospital emergency medical care, including an emer-
9 gency medical technician, paramedic, or first re-
10 sponder.

11 (4) EMPLOYER; PUBLIC SAFETY AGENCY.—The
12 terms “employer” and “public safety agency” mean
13 any State, or political subdivision of a State, that
14 employs public safety officers.

15 (5) FIREFIGHTER.—The term “firefighter” has
16 the meaning given the term “employee engaged in
17 fire protection activities” in section 3(y) of the Fair
18 Labor Standards Act of 1938 (29 U.S.C. 203(y)).

19 (6) LABOR ORGANIZATION.—The term “labor
20 organization” means an organization composed in
21 whole or in part of employees, in which employees
22 participate, and which represents such employees be-
23 fore public safety agencies concerning grievances,
24 conditions of employment, and related matters.

1 (7) LAW ENFORCEMENT OFFICER.—The term
2 “law enforcement officer” has the meaning given
3 such term in section 1204 of the Omnibus Crime
4 Control and Safe Streets Act of 1968 (42 U.S.C.
5 3796b).

6 (8) MANAGEMENT EMPLOYEE.—The term
7 “management employee” has the meaning given
8 such term under applicable State law in effect on
9 the date of enactment of this Act. If no such State
10 law is in effect, the term means an individual em-
11 ployed by a public safety employer in a position that
12 requires or authorizes the individual to formulate,
13 determine, or influence the policies of the employer.

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

16 (10) PUBLIC SAFETY OFFICER.—The term
17 “public safety officer”—

18 (A) means an employee of a public safety
19 agency who is a law enforcement officer, a fire-
20 fighter, or an emergency medical services per-
21 sonnel;

22 (B) includes an individual who is tempo-
23 rarily transferred to a supervisory or manage-
24 ment position; and

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

3 (11) STATE.—The term “State” means each of
4 the several States of the United States, the District
5 of Columbia, and any territory or possession of the
6 United States.

7 (12) SUBSTANTIALLY PROVIDES.—The term
8 “substantially provides”, when used with respect to
9 the rights and responsibilities described in section
10 3404(b), means compliance with each right and re-
11 sponsibility described in such section.

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

18 (A) has the authority in the interest of the
19 employer to hire, direct, assign, promote, re-
20 ward, transfer, furlough, lay off, recall, sus-
21 pend, discipline, or remove public safety offi-
22 cers, to adjust their grievances, or to effectively
23 recommend such action, if the exercise of the
24 authority is not merely routine or clerical in na-

1 ture but requires the consistent exercise of
2 independent judgment; and

3 (B) devotes a majority of time at work to
4 exercising such authority.

5 DETERMINATION OF RIGHTS AND RESPONSIBILITIES

6 SEC. 4404. (a) DETERMINATION.—

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

12 (2) CONSIDERATION OF ADDITIONAL OPIN-
13 IONS.—In making the determination described in
14 paragraph (1), the Authority shall consider the opin-
15 ions of affected employers and labor organizations.
16 In the case where the Authority is notified by an af-
17 fected 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 this subsection.

24 (3) LIMITED CRITERIA.—In making the deter-
25 mination described in paragraph (1), the Authority
26 shall be limited to the application of the criteria de-

1 scribed in subsection (b) and shall not require any
2 additional criteria.

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) PROCEDURES FOR SUBSEQUENT DE-
10 TERMINATIONS.—Upon establishing that a ma-
11 terial change in State law or its interpretation
12 has occurred, an employer or a labor organiza-
13 tion may submit a written request for a subse-
14 quent determination. If satisfied that a material
15 change in State law or its interpretation has oc-
16 curred, the Authority shall issue a subsequent
17 determination not later than 30 days after re-
18 ceipt of such request.

19 (5) JUDICIAL REVIEW.—Any person or em-
20 ployer aggrieved by a determination of the Authority
21 under this section may, during the 60-day period be-
22 ginning on the date on which the determination was
23 made, petition any United States Court of Appeals
24 in the circuit in which the person or employer re-
25 sides or transacts business or in the District of Co-

1 lumbia circuit, for judicial review. In any judicial re-
2 view of a determination by the Authority, the proce-
3 dures contained in subsections (c) and (d) of section
4 7123 of title 5, United States Code, shall be fol-
5 lowed.

6 (b) RIGHTS AND RESPONSIBILITIES.—In making a
7 determination described in subsection (a), the Authority
8 shall consider a State’s law to substantially provide the
9 required rights and responsibilities unless such law fails
10 to provide rights and responsibilities comparable to or
11 greater than the following:

12 (1) Granting public safety officers the right to
13 form and join a labor organization, which may ex-
14 clude management employees, supervisory employ-
15 ees, and confidential employees, that is, or seeks to
16 be, recognized as the exclusive bargaining represent-
17 ative of such employees.

18 (2) Requiring public safety employers to recog-
19 nize the employees’ labor organization (freely chosen
20 by a majority of the employees), to agree to bargain
21 with the labor organization, and to commit any
22 agreements to writing in a contract or memorandum
23 of understanding.

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

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

7 (5) Requiring enforcement of all rights, respon-
8 sibilities, and protections provided by State law and
9 enumerated in this section, and of any written con-
10 tract or memorandum of understanding between a
11 labor organization and a public safety employer,
12 through—

13 (A) a State administrative agency, if the
14 State so chooses; and

15 (B) at the election of an aggrieved party,
16 the State courts.

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

22 (d) FAILURE TO MEET REQUIREMENTS.—

23 (1) IN GENERAL.—If the Authority determines,
24 acting pursuant to its authority under subsection
25 (a), that a State does not substantially provide for

1 the rights and responsibilities described in sub-
2 section (b), then such State shall be subject to the
3 regulations and procedures described in section 3405
4 beginning on the later of—

5 (A) the date that is 2 years after the date
6 of enactment of this Act;

7 (B) the date that is the last day of the
8 first regular session of the legislature of the
9 State that begins after the date of the enact-
10 ment of this Act; or

11 (C) in the case of a State receiving a sub-
12 sequent determination under subsection (a)(4),
13 the date that is the last day of the first regular
14 session of the legislature of the State that be-
15 gins after the date the Authority made the de-
16 termination.

17 (2) PARTIAL FAILURE.—If the Authority makes
18 a determination that a State does not substantially
19 provide for the rights and responsibilities described
20 in subsection (b) solely because the State law sub-
21 stantially provides for such rights and responsibil-
22 ities for certain categories of public safety officers
23 covered by this chapter but not others, the Authority
24 shall identify those categories of public safety offi-
25 cers that shall be subject to the regulations and pro-

1 cedures described in section 4405, pursuant to sec-
2 tion 4408(b)(3) and beginning on the appropriate
3 date described in paragraph (1), and those cat-
4 egories of public safety officers that shall remain
5 subject to State law.

6 ROLE OF FEDERAL LABOR RELATIONS AUTHORITY

7 SEC. 4405. (a) IN GENERAL.—Not later than 1 year
8 after the date of enactment of this Act, the Authority shall
9 issue regulations in accordance with the rights and respon-
10 sibilities described in section 4404(b) establishing collec-
11 tive bargaining procedures for employers and public safety
12 officers in States which the Authority has determined, act-
13 ing pursuant to section 4404(a), do not substantially pro-
14 vide for such rights and responsibilities.

15 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
16 THORITY.—The Authority, to the extent provided in this
17 chapter and in accordance with regulations prescribed by
18 the Authority, shall—

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

21 (2) supervise or conduct elections to determine
22 whether a labor organization has been selected as an
23 exclusive representative by a voting majority of the
24 employees in an appropriate unit;

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

1 (4) conduct hearings and resolve complaints of
2 unfair labor practices;

3 (5) resolve exceptions to the awards of arbitra-
4 tors;

5 (6) protect the right of each employee to form,
6 join, or assist any labor organization, or to refrain
7 from any such activity, freely and without fear of
8 penalty or reprisal, and protect each employee in the
9 exercise of such right; and

10 (7) take such other actions as are necessary
11 and appropriate to effectively administer this chap-
12 ter, including issuing subpoenas requiring the at-
13 tendance and testimony of witnesses and the produc-
14 tion of documentary or other evidence from any
15 place in the United States, and administering oaths,
16 taking or ordering the taking of depositions, order-
17 ing responses to written interrogatories, and receiv-
18 ing and examining witnesses.

19 (c) ENFORCEMENT.—

20 (1) AUTHORITY TO PETITION COURT.—The Au-
21 thority may petition any United States Court of Ap-
22 peals with jurisdiction over the parties, or the
23 United States Court of Appeals for the District of
24 Columbia Circuit, to enforce any final orders under
25 this section, and for appropriate temporary relief or

1 a restraining order. Any petition under this section
2 shall be conducted in accordance with subsections
3 (c) and (d) of section 7123 of title 5, United States
4 Code.

5 (2) PRIVATE RIGHT OF ACTION.—Unless the
6 Authority has filed a petition for enforcement as
7 provided in paragraph (1), any party has the right
8 to file suit in any appropriate district court of the
9 United States to enforce compliance with the regula-
10 tions issued by the Authority pursuant to subsection
11 (b), and to enforce compliance with any order issued
12 by the Authority pursuant to this section. The right
13 provided by this subsection to bring a suit to enforce
14 compliance with any order issued by the Authority
15 pursuant to this section shall terminate upon the fil-
16 ing of a petition seeking the same relief by the Au-
17 thority.

18 STRIKES AND LOCKOUTS PROHIBITED

19 SEC. 4406. (a) IN GENERAL.—Subject to subsection
20 (b), an employer, public safety officer, or labor organiza-
21 tion may not engage in a lockout, sickout, work slowdown,
22 strike, or any other organized job action that will measur-
23 ably disrupt the delivery of emergency services and is de-
24 signed to compel an employer, public safety officer, or
25 labor organization to agree to the terms of a proposed con-
26 tract.

1 (b) NO PREEMPTION.—Nothing in this section shall
2 be construed to preempt any law of any State or political
3 subdivision of any State with respect to strikes by public
4 safety officers.

5 EXISTING COLLECTIVE BARGAINING UNITS AND
6 AGREEMENTS

7 SEC. 4407. A certification, recognition, election-held,
8 collective bargaining agreement or memorandum of under-
9 standing which has been issued, approved, or ratified by
10 any public employee relations board or commission or by
11 any State or political subdivision or its agents (manage-
12 ment officials) and is in effect on the day before the date
13 of enactment of this Act shall not be invalidated by the
14 enactment of this Act.

15 CONSTRUCTION AND COMPLIANCE

16 SEC. 4408. (a) CONSTRUCTION.—Nothing in this
17 chapter shall be construed—

18 (1) to preempt or limit the remedies, rights,
19 and procedures of any law of any State or political
20 subdivision of any State that provides greater or
21 comparable rights and responsibilities than the
22 rights and responsibilities described in section
23 4404(b);

24 (2) to prevent a State from enforcing a right-
25 to-work law that prohibits employers and labor orga-
26 nizations from negotiating provisions in a labor

1 agreement that require union membership or pay-
2 ment of union fees as a condition of employment;

3 (3) to preempt or limit any State law in effect
4 on the date of enactment of this Act that provides
5 for the rights and responsibilities described in sec-
6 tion 4404(b) solely because such State law permits
7 an employee to appear on the employee's own behalf
8 with respect to the employee's employment relations
9 with the public safety agency involved;

10 (4) to preempt or limit any State law in effect
11 on the date of enactment of this Act that provides
12 for the rights and responsibilities described in sec-
13 tion 4404(b) solely because such State law excludes
14 from its coverage employees of a State militia or na-
15 tional guard;

16 (5) to permit parties in States subject to the
17 regulations and procedures described in section 4405
18 to negotiate provisions that would prohibit an em-
19 ployee from engaging in part-time employment or
20 volunteer activities during off-duty hours;

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

1 (7) 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 4404(b) solely because such law or ordi-
5 nance does not require bargaining with respect to
6 pension, retirement, or health benefits.

7 For purposes of paragraph (6), 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
13 chapter or the regulations promulgated under this
14 chapter shall be construed to require a State to re-
15 scind or preempt the laws or ordinances of any of
16 the State’s political subdivisions if such laws provide
17 rights and responsibilities for public safety officers
18 that are comparable to or greater than the rights
19 and responsibilities described in section 4404(b).

20 (2) ACTIONS OF THE AUTHORITY.—Nothing in
21 this chapter or the regulations promulgated under
22 this chapter 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 4404(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 4404(b) with respect to certain categories
7 of public safety officers covered by this Act
8 solely because such rights and responsibilities
9 have not been extended to other categories of
10 public safety officers covered by this chapter; 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 4404(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 4405 with respect to those categories of pub-
25 lic safety officers who have not been afforded the

1 rights and responsibilities described in section
2 4404(b).

3 (4) EXCLUSIVE ENFORCEMENT PROVISION.—
4 Notwithstanding any other provision of the chapter,
5 and in the absence of a waiver of a State’s sovereign
6 immunity, the Authority shall have the exclusive
7 power to enforce the provisions of this chapter with
8 respect to employees of a State.

9 AUTHORIZATION OF APPROPRIATIONS
10 SEC. 4409. There are authorized to be appropriated
11 such sums as may be necessary to carry out the provisions
12 of this chapter.

13 CHAPTER 5
14 PROGRAM INTEGRITY INITIATIVES
15 DEPARTMENT OF THE TREASURY
16 INTERNAL REVENUE SERVICE
17 ENFORCEMENT

18 For an additional amount for “Enforcement”,
19 \$245,000,000, to remain available through September 30,
20 2011, for additional and enhanced tax enforcement activi-
21 ties: *Provided*, That section 3002 shall not apply to the
22 amount under this heading.