

SENATE BILL 2991

By Berke

AN ACT to amend Tennessee Code Annotated, Title 4, to enact the "Public Safety Employer-Employee Cooperation Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) This act shall be known and may be cited as the "Public Safety Employer-Employee Cooperation Act".

(b)

(1) It is the purpose of this act to prescribe the legitimate rights and obligations of municipalities and their professional employees of the public safety departments to establish procedures governing relationships between them, which are designed to meet the special requirements and needs of municipal public safety departments.

(2) Municipalities and their professional public safety department employees have an obligation to the public to exert their full and continuing efforts to achieve the highest possible safety standards in the municipality which they serve. This requires establishment and maintenance of a professional climate and working environment that will attract and retain a highly qualified professional staff and stimulate optimum performance by such staff.

(3) Experience has shown that municipalities and their professional public safety employees can best reach these objectives if each utilizes the ability, experience and judgment of the other in formulating policies and making decisions that involve terms and conditions of professional service and other

matters of mutual concern. It is the purpose and policy of this act, in order to protect the rights of individual employees in their relations with municipalities, and to protect the rights of the municipalities and the public in connection with employer-employee disputes affecting the public safety service, to recognize the rights of professional public safety employees of municipalities to form, join and assist professional public safety employee organizations to meet, confer, consult, and negotiate with municipalities over matters relating to terms and conditions of professional service and other matters of mutual concern through representatives of their own choosing, to engage in other activities for the purpose of establishing, maintaining, protecting and improving safety service standards, and to establish procedures which will facilitate and encourage amicable settlements of disputes.

(4) The "terms and conditions of professional service" or "working conditions" of professional public safety employees are those fundamental matters that affect a professional public safety employee financially or the employee's employment relationship with the municipality.

(5) Notwithstanding any other provision to the contrary, nothing in subdivisions (b)(4) and (5) shall be construed to prevent a municipality or professional public safety employee organization from engaging the services of qualified individuals for purposes of advice and consultation during the negotiations process.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Arbitration" means the process of determination of disputed matters by submission to private unofficial persons selected for a purpose, and in a

manner consistent with this act. Arbitration under this act is governed by § 29-5-302(b);

(2) "Collective bargaining agreement" means a written contract, memorandum of understanding or agreement arrived at by the representatives of the municipality and a recognized professional public safety employees' organization on or after the effective date of this act, which is subsequently presented to the municipality and to the membership of such organization for ratification or rejection. This act does not apply to any such collective bargaining agreement or memorandum of understanding arrived at prior to the effective date of this act, unless all parties to the collective bargaining agreement or memorandum of understanding agree to renegotiate the collective bargaining agreement or memorandum of understanding;

(3) "Emergency medical services personnel" means an individual who provides out-of-hospital emergency care, including an emergency medical technician, paramedic, or first responder;

(4) "Firefighter" has the same meaning given the term "employee in fire protection activities" as defined in § 3 of the Fair Labor Standards Act, 29 U.S.C. § 203(y). "Firefighter" includes but is not limited to fire safety inspectors, arson investigators, training officers, dispatchers, and support personnel;

(5) "Law enforcement officer" has the same meaning given such term in § 1204(5) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3796b(5);

(6) "Management personnel" means the chief or director of a public safety department who has the authority to hire or terminate another's employment;

(7) "Mediation" means that process by which a federal mediator, or a service as determined by the department of labor and workforce development, assists in reconciling a dispute regarding compensation, benefits, duties and other terms and conditions of employment and service between representatives of the municipality and the recognized professional public safety employees' organization through interpretation, recommendations and advice;

(8) "Municipality" or "local municipality" means any city or county having jurisdiction over paid professional public safety departments, including any county having a metropolitan form of government;

(9) "Negotiating unit" means the entire public safety department of a municipality, which employs professional public safety employees as defined by subdivision (13);

(10) "Negotiations" means that process whereby the chief executive of a municipality or such representatives as it may designate, and representatives of a recognized professional public safety employees' organization meet at reasonable times and confer, consult, discuss, exchange information, opinions and proposals, in a good faith endeavor to reach agreement on matters within the scope of discussions, and incorporate such agreements into a written agreement;

(11) "Negotiator" means the person selected by the municipality and the professional public safety employees' organization to do the negotiating;

(12) "Person" includes one (1) or more individuals, organizations, associations or their representatives;

(13) "Professional public safety employee" means any person employed as a public safety officer by public safety departments of a municipality or any

person designated as public safety personnel by public safety departments of a municipality;

(14) "Professional public safety employees' organization" means any organization with membership open to professional public safety employees, as defined in subdivision (13), in which such employees participate and which exists for the purpose of dealing with municipalities concerning, but not limited to, grievances, wages, hours of employment, or other conditions of employment. Such organizations may establish rules and regulations for conducting business, including provisions for the dismissal of individuals from membership. Such organization shall be limited to a professional public safety employee's organization which only represents public safety employees and other public safety personnel employed by public safety departments;

(15) "Public safety departments" means individual fire departments, fire districts, law enforcement agencies, and emergency medical agencies;

(16) "Public safety officer" means an employee of public safety agencies or public safety departments who is a law enforcement officer, a firefighter, or emergency medical services personnel. "Public safety officer" includes an individual who is temporarily transferred to a management position; and does not include a permanent management employee;

(17) "Representative" includes any person, or group of persons, organization or association who is designated and authorized by the respective negotiating unit or local municipality to negotiate and act for it under this act;

(18) "Strike" means the failure with others to report for duty, the willful absence from one's position, the stoppage of work or the abstinence in whole or part from the full, faithful and proper performance of the duties of employment,

and without the lawful approval of one's superior, or in any manner interfering with the operation of the paid public safety department, for the purpose of inducing or coercing the recognition of any employee organization or change in the conditions or compensation or the rights, privileges or obligations of employment;

(19) "Tennessee public safety labor board" means the board created pursuant to Section 3 set up under the department of labor and workforce development to resolve any dispute related to which professional public safety employees organization will be the exclusive representative of the employees of a public safety department.

SECTION 3.

(a) There is created the Tennessee public safety labor board, referred to as board in this act.

(b) The board shall consist of three (3) members experienced in public safety labor relations.

(c) One (1) member shall be chosen and appointed by the governor.

(d) One (1) member shall represent firefighters/EMS to be appointed by the governor and selected from a list of three (3) names submitted by the Tennessee professional firefighters association.

(e) One (1) member shall represent law enforcement to be appointed by the governor and selected from a list of three (3) names submitted by the professional public employee organization representing the majority of law enforcement employees within the state.

(f) The terms of office shall be three (3) years and terms shall be staggered so as not have a complete turn over on the board in any one (1) year.

(g) Board members shall be reimbursed by the state for expenses incurred while performing their duties in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

SECTION 4. Professional public safety employees have the right to self-organization, to form, join or be assisted by organizations, to negotiate through representatives of their own choosing, and to engage in other concerted activities for the purpose of professional negotiations or other mutual aid or protection; provided, that employees also have the right to refrain from any or all such activities.

SECTION 5.

(a) Any rights and responsibilities of municipalities and professional public safety employees as otherwise contained in title 7 or any other law are not statutorily modified or repealed by this act.

(b) This act shall not operate so as to annul, modify or preclude the renewal or continuation of any recognition heretofore entered into between a municipality and a professional public safety employees' organization. Upon the termination of an existing agreement, subsequent professional public safety employees' organization recognition shall be governed under this act; provided, that the time schedule established in Section 6 shall not be applicable, and recognition with all accompanying rights shall become available immediately upon the completion of the other required recognition procedures.

SECTION 6.

(a) Upon the submission by a professional public safety employees' organization to the appropriate local municipality of a request for recognition together with signed petition cards of professional public safety employees, which is equal to the requirements under § 7-51-204, such public safety employees' organization will be the exclusively recognized representative for

the professional public safety employees of that particular public safety department. If more than one (1) professional public safety employees' organization meets the requirements for recognition with signed petition cards which is equal to the requirements under § 7-51-204, the board shall setup and conduct an election within sixty (60) days of the date the signed cards were submitted, to decide which professional public safety employees' organization shall be the exclusive employee representative for that public safety department. Cost for the election shall be borne equally by both parties. Once the exclusive representative has been established under this section it may not be challenged for a period of twelve (12) months.

(b) This act shall not be construed to invalidate a certification, recognition, collective bargaining agreement, or memorandum of understanding that has been issued, approved, or ratified by any professional public safety employees, public safety department, political subdivision of the state or its agents (management officials) in effect on the day before the date this act becomes law or the results of any election held or recognition of a professional public safety employees' organization before the date this act becomes law.

(c) When a professional public safety employees' organization has met the requirement of recognition in this section as the exclusively recognized organization, the municipality and such organization shall, in good faith, enter into negotiations, and when an agreement is reached, enter into a collective bargaining agreement based upon such negotiations and comply with such agreement according to this act.

(d)

(1) It is a violation of this act to use such a collective bargaining agreement to force a municipality to increase taxes in order to comply with any negotiated terms contained within such agreement.

(2) A complaint of a violation of subdivision (d)(1) shall be filed with the board.

SECTION 7. A professional public safety employees' organization recognized pursuant to this act shall be the exclusive representative of all the professional public safety employees employed by that particular public safety department for the purpose of negotiating. A challenge to recognition may be made only by the municipality or another professional public safety employees' organization as provided in Section 6.

SECTION 8.

(a) When the municipality and the recognized professional public safety employees' organization are presented with petitions bearing the signatures of a majority of the professional public safety employees in the negotiating unit of that particular public safety department indicating they no longer desire to be represented by the recognized organization, an election to decertify the recognized professional public safety employees' organization shall be held in accordance with guidelines established by the department of labor and workforce development.

(b) If a majority in the negotiating unit of that particular public safety department votes for decertification, the department of labor and workforce development shall thereupon notify the municipality and the recognized professional public safety employees' organization that the organization is no longer the recognized representative.

(c) Those persons requesting a decertification election shall be assessed by the municipality an amount adequate to pay for conducting the election.

(d) The terms and conditions of any existing collective bargaining agreement shall continue in existence for the terms of the collective bargaining agreement, except that reference to the recognized professional public safety employees' organization shall mean the individual employee.

(e) The municipality shall not be required to negotiate with any subsequently recognized professional public safety employees' organization for the remaining period

of the existing collective bargaining agreement, but shall negotiate at the appropriate time as set forth in this act with a subsequently recognized professional public safety employees' organization for a future period.

SECTION 9.

Management personnel shall not be eligible to represent the recognized professional public safety employees' organization.

SECTION 10.

(a) It is a violation of this act for a municipality or its designated representative to:

(1) Impose or threaten to impose reprisals on professional employees, or discriminate against professional employees by reason of their exercise of rights guaranteed by this act;

(2) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 4;

(3) Refuse or fail to negotiate in good faith or execute a collective bargaining agreement incorporating any agreements reached with representatives of a recognized professional public safety employees' organization as provided in this act;

(4) Refuse to permit a professional public safety employees' organization to have access at reasonable times to areas in which professional public safety employees work, use institutional bulletin boards, mailboxes, or other communication media, or use institutional facilities at reasonable times for the purpose of holding a meeting concerned with the exercise of the rights guaranteed by this act; provided, that if a representative has been selected or designated pursuant to this act, a municipality may deny such access or usage to any professional public safety employees' organization other than the

representative until such time as a lawful challenge to the majority status of the representative is sustained pursuant to this act;

(5) Encourage or discourage membership in any organization by discrimination in hiring, or other terms or conditions of employment; provided, that the municipality or its designated representative may express any views, arguments or opinions on the subject of employer-employee relations provided that such expression contains no threat of reprimand, discharge, or promise of benefits;

(6) Discharge or discriminate against an employee because the employee has filed an affidavit, petition or complaint, or given any information or testimony under this act;

(7) Dominate, interfere or assist in the administration of any professional public safety employees' organization;

(8) Refuse to in good faith mediate, arbitrate or participate in fact-finding efforts pursuant to this act; or

(9) Urge, coerce or encourage others to engage in any actions which are violations of this.

(b) It is a violation of this act for a recognized professional public safety employees' organization or its representatives to:

(1) Cause or attempt to cause a municipality to engage in conduct in violation of the provisions of this act; provided, that this subdivision (b)(1) shall not be construed to impair the right of a professional public safety employees' organization to prescribe its own rules with respect to operation involving the acquisition or retention of membership;

(2) Refuse or fail to negotiate in good faith with municipalities, or execute a written contract incorporating any agreements reached;

(3) Interfere with, restrain or coerce professional public safety employees or a municipality in the exercise of rights granted in this act;

(4) Refuse to in good faith mediate, arbitrate or participate in fact-finding efforts pursuant to this act;

(5) Engage in a strike; or

(6) Urge, coerce or encourage others to engage in unlawful acts as defined in this act.

(c) A complaint of a violation of this act shall be filed with the board.

SECTION 11.

(a) The municipality and the recognized professional public safety employees' organization shall negotiate in good faith the following conditions of employment:

(1) Salaries or wages;

(2) Grievance procedures;

(3) Insurance;

(4) Pensions and fringe benefits;

(5) Working conditions;

(6) Leave;

(7) Payroll deductions; provided that payroll deductions established pursuant to § 7-51-204 for payment of dues shall not be considered a condition of employment for purposes of this subdivision (a)(7);

(8) Health, safety, and general welfare; and

(9) Other conditions of employment.

(b) Nothing shall prohibit the parties from agreeing to discuss other terms and conditions of employment in service. Either party may file a complaint in a court of record on any demands to meet on other terms and conditions and have an order of the court requiring the other party to continue to meet in good faith on the required items of this section only. Any negotiations under this act shall be meetings within the provisions of title 8, chapter 44, part 2.

SECTION 12.

(a) The scope of a collective bargaining agreement shall extend to all matters negotiated between the municipality and the professional public safety employees' organization, provided, that the scope of such agreement shall not include proposals contrary to:

- (1) Federal or state law;
- (2) Professional public safety employee rights defined in this act; or
- (3) Municipal rights contained in title 6 or title 7.

(b) When agreement is reached by the representative of the municipality and the recognized professional public safety employees' organization, they shall jointly prepare a collective bargaining agreement, and, up to ten (10) calendar days, present it to their appropriate governing authorities for ratification or rejection. These governing authorities, as soon as practical, shall consider the collective bargaining agreement and take appropriate action. If either governing authority rejects or modifies any part of a proposed collective bargaining agreement, the matter shall be returned to the parties for further negotiation.

(c) A municipality and a recognized professional public safety employees' organization that enter into an agreement covering terms and conditions of professional service or other matters of mutual concern shall include in such agreement procedures

for final and binding arbitration of such disputes as may arise involving the interpretation, application or violation of such agreement.

SECTION 13.

(a) Following reasonable efforts to reach a collective bargaining agreement, either the municipality or the recognized professional public safety employees' organization shall, upon written notification to the other, request the services of a mediation and conciliation service as determined by the department of labor and workforce development. If such service is not available at a time agreeable to the requesting party, then the party can request arbitration.

(b) If the mediator is unable to bring the parties to agreement, either party may, by written notification to the other, request that their differences be submitted to binding arbitration. Either party may request the American Arbitration Association or the Federal Mediation and Conciliation Service, or other service as determined by the department of labor and workforce development, to submit a list of at least seven (7) arbitrators to be agreed upon by both parties. Any items negotiated by a municipality and the recognized professional public safety employees' organization that require funding shall not be considered binding until such time as the body empowered to appropriate the funds has approved such appropriation. In the event the amount of funds appropriated is less than the amount negotiated, the municipality or its representatives and the recognized professional public safety employees' organization or its representatives shall renegotiate an agreement within the amount of funds appropriated.

(c) The arbitrator shall meet with the parties or their representatives, or both, either jointly or separately, make inquiries and investigations, hold hearings, and shall take such other steps as the arbitrator deems appropriate. For the purpose of such hearings, investigations and inquiries, the arbitrator shall have the power to issue

subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The several departments, commissions, divisions, authorities, boards, bureaus, agencies and officers of the municipality or any political subdivision or agency thereof, shall furnish the arbitrator, upon the arbitrator's request, all records, papers and information in their possession relating to any matter under investigation by or in issue before the arbitrator. Arbitration will be based on a "last best offer" system, with the arbitrator choosing one (1) of the last best offers made by the parties. If the dispute is not settled prior thereto, the arbitrator shall make findings of fact and the arbitrator's award shall be binding on both parties and shall be made within thirty (30) calendar days after the conclusion of the hearing. Any finding of fact or terms of settlement shall be submitted in writing to the parties. The costs for the services of the arbitrator shall be borne by the party who loses.

SECTION 14.

(a) Nothing in this act shall be construed to violate title 50, chapter 1, part 2 or any other right to work laws of this state only to the extent of such conflict.

(b) Nothing in this act shall be constructed to violate federal law.

SECTION 15. Tennessee Code Annotated, Section 4-29-233, is amended by adding the following language as a new, appropriately designated subdivision:

() Tennessee public safety labor board created by Section 3 of this act;

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect upon becoming law, the public welfare requiring it.