PUBLICATION

Is Collective Bargaining On Its Way to the Public Sector?

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The United States Senate is moving closer to passing new legislation which would mandate union "monopoly bargaining" for state and local public-safety employees. This legislation, known as the Public Safety Employer-Employee Cooperation Act (H.R. 413, S. 3194) (PSEECA), would require nearly all state and local governments to pass legislation to allow collective bargaining with public safety employees (e.g., police, fire and emergency medical personnel) over wages, hours and terms of employment. The Act would allow the Federal Labor Relations Authority to establish mandatory collective bargaining rights for all public safety employees, should a state fail to act.

Under current federal law, public safety employees do not have the right to collectively bargain with their employers unless allowed by state law. Approximately 30 states have laws that allow police officers, firefighters and emergency medical services personnel to participate in some form of collective bargaining. The PSEECA would require the remaining states, many of which are in the southeast, to pass legislation granting collective bargaining rights to public safety employees. Inevitably, states would be required to determine: (1) who qualifies as a "supervisor" for purposes of the legislation; (2) whether arbitration of grievances will be binding on the state or local government; (3) whether penalties will be imposed on employees who engage in strikes or similar disruptive acts; and (4) whether governmental entities will be required to collect dues from qualifying employees.

Unlike traditional employees, supervisors are generally excluded from collective bargaining units. Thus, supervisory employees should be exempt from any state legislation mandated by the PSEECA. Accordingly, states will be charged with the task of defining "supervisor" for purposes of their respective legislation. In the past, the definition of "supervisor" has led to substantial debate between management and labor unions. For example, the National Labor Relations Board is still clarifying the meaning of "supervisor" for purposes of the National Labor Relations Act of 1935, an act that dealt exclusively with private sector employees. While supervisory employees have now been more clearly identified in the private sector, the issue is largely unvisited with regard to public sector employees. Obviously, a more expansive interpretation of "supervisor" would benefit management, whereas a more tailored definition would favor labor groups. This is one of the many issues that states will be forced to resolve themselves as a result of this legislation.

States passing new legislation in compliance with PSEECA will also need to consider whether arbitration of grievances will be binding on the public entity. While the proposed legislation does not expressly require mandatory arbitration of grievances, it does require that state and local governments create an impasse resolution procedure such as mediation, arbitration or comparable procedures. Because states and municipalities vary in term of size and location, a state-mandated "one size fits all" impasse resolution procedure is likely to place greater strain on some local governments than others. For example, a state-mandated impasse resolution procedure may be more difficult to implement in a large city than in a rural town. Yet, pursuant to PSEECA, states will be required to create impasse resolution procedures to be applied uniformly throughout their respective political subdivisions. The PSEECA makes it illegal for public safety employees to strike, which in effect could make binding arbitration a foreseeable, if not likely, result of an impasse. Mandatory binding arbitrations for public safety employees could place an even greater strain on state budgets that are already heavily burdened.

Another consideration is whether penalties will be imposed against employees who engage in strikes, sickouts or related disruptive job actions. The PSEECA does not provide specified penalties for such activities, but it does not "preempt any law of any State or political subdivision of any State with respect to strikes by public safety officers." While a number of states have passed legislation prohibiting strikes and/or related organized job actions, these provisions have proven difficult to enforce due to the varying size and make-up of municipalities. Thus, even if a state chooses to pass legislation prohibiting strikes and imposing certain penalties, it is unclear that such prohibitions will prove effective.

Governmental entities must also decide whether to collect/deduct union dues. The proposed legislation is silent on this question, which will likely be resolved by the respective state legislatures. Deducting union dues from public safety employees could prove to be a costly administrative function. In addition, states would also have to determine whether the amount of dues would be based on salary or services offered and whether non-dues paying members would be afforded *some* collective bargaining rights or none at all.

This proposed legislation could have tremendous impact on state budgets and ultimately the individual taxpayer. If you need assistance with these or any labor and employment issue, do not hesitate to contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in *Birmingham, Alabama*; *Atlanta, Georgia*; *Baton Rouge*, *Mandeville* and *New Orleans, Louisiana*; *Jackson, Mississippi*; and *Chattanooga*, *Johnson City*, *Knoxville*, *Memphis* and *Nashville, Tennessee*.

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