

Senate Bill No. 119

(By Senator Yost)

[Introduced January 14, 2015; referred to the Committee on Labor; and then to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §8-15B-1, §8-15B-2, §8-15B-3, §8-15B-4 and §8-15B-5, all relating to meeting and conference rights for members of police or fire departments employed by political subdivisions; providing for right of these members to self organization; allowing designation of exclusive representative agent; imposing duty to meet and confer with employees; allowing deduction of employee organization dues and assessments; providing for compulsory arbitration of disputes; listing prohibited acts; allowing hearings before Civil Service Commission; providing judicial review; specifying powers and duties of Civil Service Commission; and allowing injunctive relief.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §8-15B-1, §8-15B-2, §8-15B-3, §8-15B-4 and §8-15B-5, all to read as follows:

ARTICLE 15B. MEETING AND CONFERENCE RIGHTS FOR MEMBERS OF POLICE

1 **OR FIRE DEPARTMENTS.**

2 **§8-15B-1. Definitions.**

3 As used in this article:

4 (1) "Commission" means the policemen's or firemen's Civil Service Commission provided
5 in article fourteen or fifteen of this chapter.

6 (2) "Employee organization" means any association, organization, federation or council
7 composed of police officers or firefighters having as one of its purposes the representation of its
8 members in negotiations with a political subdivision.

9 (3) "Firefighter" means any person, other than a fire chief, employed as a fireman on a full-
10 time basis by a political subdivision if the person is covered by the civil service provisions of article
11 fifteen of this chapter.

12 (4) "Policeman" means any person, other than a police chief, employed as a police officer on
13 a full-time basis by a political subdivision if the person is covered by the civil service provisions of
14 article fourteen of this chapter.

15 (5) "Political subdivision" means, and is limited to, any municipality within the state.

16 (6) "Strike" means the failure to report for duty as a result of concerted action with an
17 employee organization, the willful absence from one's position, the stoppage of work or the
18 abstinence, in whole or in part, from the full, faithful and proper performance of the duties of
19 employment or any manner of interference with the operation of any police or fire department of a
20 political subdivision for the purpose of inducing, influencing or coercing a change in the conditions
21 or compensation or the rights, privileges or obligations of employment.

22 **§8-15B-2. Right to self-organization and exclusive representation; dues.**

1 (a) Firefighters and policemen have, and are protected in the exercise of, the right of self-
2 organization to form and join any employee organization, to meet and confer with their employers
3 through representatives of their own choosing on questions of wages, hours and other conditions of
4 employment, except to strike, for the purpose of contracting for rights, free from actual interference,
5 restraint or coercion: *Provided*, That an employee organization duly designated to represent the
6 firefighters or policemen employed by a political subdivision shall be the exclusive contracting agent
7 for all firefighters or policemen so employed. The organization shall act, negotiate agreements and
8 contract for rights for all firefighters or policemen and is responsible for representing the interests
9 of all firefighters or policemen.

10 (b) An employee organization claiming to represent a majority of the firefighters or
11 policemen of a political subdivision shall be recognized as the exclusive contracting agent by the
12 political subdivision upon the presentation of a petition or other document in which a majority of the
13 firefighters or policemen employed by the political subdivision designates the employee organization
14 as their exclusive contracting agent. In the event that a political subdivision has a good faith doubt
15 as to the majority status of the employee organization it shall, within thirty days of the receipt of the
16 petition or document, request its Civil Service Commission to conduct a secret ballot election within
17 thirty days of the receipt of the request. The commission shall certify the results of the election
18 within three days after the election. Following recognition or certification and, upon the written
19 authorization of any firefighter or policeman, the political subdivision shall deduct from the payroll
20 of the firefighter or policeman the monthly amount of dues or assessments of the employee
21 organization as certified by the secretary of the employee organization and shall deliver the same to
22 the employee organization's treasurer no later than the last day of the month following the deduction.

1 **§8-15B-3. Board of Arbitration; duty to meet and confer with employees and arbitrate;**
2 **procedures.**

3 (a) The political subdivision and the employee organization recognized or certified as the
4 exclusive contracting agent shall contract for all employees' rights. Representatives of the political
5 subdivision and the employee organization shall meet at reasonable times, including meetings
6 appropriately related to the budget making process, and shall confer in good faith with respect to
7 wages, hours and other conditions of employment, or the negotiation of an agreement or any
8 questions arising thereunder, and shall execute a written contract incorporating any agreement
9 reached, and neither party may be compelled to agree to a proposal or make a concession.

10 (b) If, after a reasonable period of negotiations concerning wages, hours and other conditions
11 of employment, a dispute exists between the political subdivision and the employee organization,
12 or if no agreement has been reached on wages, hours and other conditions of employment sixty days
13 prior to the final date for the setting of the budget of the political subdivision, either party or the
14 parties jointly may request arbitration of the issue or issues in dispute by a board of arbitration. The
15 Board of Arbitration shall be composed of three persons, one appointed by the political subdivision,
16 one appointed by the employee organization and a third member to be agreed upon by the parties.
17 The members of the board representing the political subdivision and the employee organization shall
18 be named within five days from the date of the request for the appointment of the board. If, after a
19 period of five days from the date of the appointment of the two arbitrators appointed by the political
20 subdivision and the employee organization, the third arbitrator has not been mutually agreed upon,
21 then either arbitrator may request the federal mediation and conciliation service to furnish a list of
22 five members from its list of arbitrators. Within five days after the receipt of the list, the

1 representative of the political subdivision and the employee organization shall each strike two names
2 from the list. The individual whose name remains on the list is the third arbitrator. The third
3 arbitrator is the chairman of the Board of Arbitration.

4 (c) The chairman of the Board of Arbitration shall establish reasonable dates and places of
5 hearing. Any hearings involved shall be conducted in accordance with the rules established for
6 arbitration by the American Arbitration Association. The rules of evidence promulgated by the
7 Supreme Court of Appeals do not apply. The chairman may issue subpoenas and administer oaths.
8 Upon completion of the hearings and within fifteen days, the Board of Arbitration shall make
9 findings of fact and render a decision. The decision is final and binding upon both parties, except
10 as provided in subsection (d) of this section. The compensation, if any, for the appointed arbitrator
11 will be paid by the political subdivision. The compensation and expenses of the third arbitrator, as
12 well as all stenographic and other expenses incurred by the arbitration board in connection with
13 arbitration proceedings, shall be paid equally by the parties.

14 (d) Prior to invoking the arbitration procedure provided in this article, the political
15 subdivision and the employee organization shall submit to each other a final settlement offer on all
16 unresolved issues. The arbitration panel is limited, after hearing, to resolving the dispute by
17 adopting, on an issue by issue basis, the final offer of either the political subdivision or the employee
18 organization. In making its decision, the panel shall consider the following:

- 19 (1) Prior agreements, if any, between the political subdivision and the employee organization;
20 (2) Comparison of the issues submitted to final offer settlement relative to the employees in
21 the contracting unit involved with those issues related to other public and private employees doing
22 comparable work, giving consideration to factors peculiar to the area and classification involved;

1 (3) The interests and welfare of the public, the ability of the public employer to finance and
2 administer the issues proposed and the effect of the adjustments on the normal standard of public
3 service;

4 (4) The lawful authority of the public employer;

5 (5) Any stipulations of the political subdivision and the employee organization; and

6 (6) Any other factors, not confined to those listed in this section, which are normally or
7 traditionally taken into consideration in the determination of issues submitted to final offer
8 settlement through voluntary conference, mediation, fact-finding or other impasse resolution
9 procedures in public service or in private employment.

10 (e) Any arbitration decision as well as any written agreement between a political subdivision
11 and an employee organization determining the terms and conditions of employment of firefighters
12 and policemen shall contain the following notice: "It is agreed by the parties that any provision
13 contained herein requiring legislative action to permit its implementation by amendment of law or
14 by providing the additional funds therefor, will not become effective until the appropriate legislative
15 body has given approval."

16 **§8-15B-4. Prohibited acts; hearings.**

17 (a) Political subdivisions are prohibited from:

18 (1) Interfering with, restraining or coercing firefighters or policemen in the exercise of their
19 rights guaranteed by this article;

20 (2) Dominating or interfering with the formation or administration of any employee
21 organization;

22 (3) Discharging or otherwise discriminating against a firefighter or policeman because he or

1 she has signed or filed any petition, affidavit or complaint or given information or testimony
2 pursuant to this article;

3 (4) Refusing to meet and confer in good faith with any employee organization which has been
4 recognized or certified as the exclusive contracting agent of the firefighters or policemen;

5 (5) Refusing to discuss grievances with the agent of the policemen or firefighters; or

6 (6) Refusing to abide by a valid arbitration decision.

7 (b) Employee organizations are prohibited from:

8 (1) Restraining or coercing a firefighter or policeman in the exercise of his or her rights
9 guaranteed under this article;

10 (2) Causing or attempting to cause a political subdivision to discriminate against a firefighter
11 or policeman in violation of subsection (a) of this section;

12 (3) Refusing to meet and confer in good faith with a political subdivision;

13 (4) Striking against or withholding their members' services from a political subdivision:

14 *Provided*, That firefighters or policemen who are absent from work without permission are presumed
15 to have engaged in a strike unless evidence of illness or other good cause is presented by each
16 firefighter or policeman for each absence; or

17 (5) Refusing to abide by a valid arbitration decision.

18 (c) Any firefighter or policeman who engages in a concerted strike against a political
19 subdivision or withholds services from a political subdivision shall be suspended from duty for a
20 period not to exceed six months without pay, and the employee organization to which any striking
21 firefighter or policeman belongs shall lose its right for six months to have the monthly amount of
22 dues withheld for all of its members' pay by the employer. The treasurer or chief financial officer

1 of the political subdivision may not issue any warrant or check to any suspended firefighter or
2 policeman for the payment of wages which might otherwise be payable during that period, nor may
3 the treasurer or chief financial officer issue any warrant or check for the monthly amount of dues of
4 members of the employee organization to that organization as required by subsection (b), section two
5 of this article.

6 (d) Any private citizen of a political subdivision against which a prohibited act has been
7 committed may seek a writ of mandamus or any other remedy which is authorized by law to enforce
8 compliance with subdivision (c) by any treasurer or chief financial officer.

9 (e) (1) Any firefighter or policeman, employee organization or political subdivision which
10 has reasonable cause to believe that a violation of this section has occurred may file a complaint with
11 the commission and serve a copy on each person, employee organization or political subdivision
12 involved.

13 (2) The commission may make and enter an order dismissing the complaint or may conduct
14 an investigation or hold a hearing on the complaint. The firefighter or policeman, employee
15 organization or political subdivision so complained of have the right to file an answer to the
16 complaint, or any amended complaints, within twenty days after the service of the complaint. If a
17 hearing is ordered, the commission shall set the time and place for the hearing, which time and place
18 may be changed by the commission at the request of one of the parties for good cause shown.

19 (3) The firefighter or policeman, employee organization or political subdivision may appear
20 in person or otherwise defend against the complaint. In the discretion of the commission any other
21 person may be allowed to intervene in the proceedings.

22 (4) The commission is not bound by the rules of evidence promulgated by the Supreme Court

1 of Appeals and the commissioner has the power of subpoena and to administer oaths. A transcript
2 of the testimony taken at any hearing before the commission shall be filed in the office of the
3 commission, and be opened for inspection by either of the parties or their authorized representatives.
4 The commission shall bear the cost of producing the transcript.

5 (f)(1) If, upon all the testimony and evidence, the commission determines that a prohibited
6 practice has been committed, it shall state its findings of fact in writing and shall issue and cause to
7 be served on the party committing the prohibited practice an order requiring the employee
8 organization or the political subdivision to cease and desist from the prohibited practice. The
9 commission may take any further affirmative action as will comply with the provisions of this
10 section, including, but not limited to, the withdrawal of certification of an employee organization
11 established by or assisted in its establishment by any prohibited practice.

12 (2) If, upon all the testimony and evidence, the commission determines that a prohibited
13 practice has not been or is not being committed, it shall state its findings of fact and conclusions of
14 law and shall issue an order dismissing the complaint.

15 (g) In the event that a firefighter or policeman, employee organization or political subdivision
16 refuses to comply with an order from the commission and fails to appeal the order as hereinafter
17 provided, the commission shall request the Attorney General of West Virginia to seek injunctive
18 relief in the circuit court of the county where the prohibited act was or is being committed.

19 **§8-15B-5. Judicial review.**

20 (a) Except as otherwise provided in subsection (b) of this section, any party adversely
21 affected by an order of the commission is entitled to appeal a decision of the commission to circuit
22 court, as provided in article five, chapter twenty-nine-a of this code.

1 (b) An action appealing a decision of the commission may only be initiated in the circuit
2 court where the political subdivision is located. The appeal must be filed within ninety days from
3 the date of the entry by the commission of its final order. Upon an appeal being taken and docketed
4 with the clerk of the circuit court, the circuit court shall proceed to hear the appeal upon the original
5 record made before the commission. Any party adversely affected by a decision and final order of
6 the circuit court has the right to petition the Supreme Court of Appeals for a review of the decision
7 of the circuit court, as in other civil cases.

NOTE: The purpose of this bill is to provide meetings and conference rights for members of municipal police and fire departments seeking to self-organize an employee group to be exclusive representative agent for the employees. The bill also creates duties for the policemen and firefighters' Civil Service Commissions.

This article is new; therefore, strike-throughs and underscoring have been omitted.