

Georgia Public Employees Right to Bargain

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Georgia is one of a few “right to work” states, which means basically that Georgia employers may dismiss employees for no reason and employees may quit at any time (both supposedly without adverse consequences). In reality, many local and state government employers provide some sort of due process procedure prior to terminating their employees and adverse consequences certainly do exist. This same “right to work” mentality and the strong anti-union sentiments in the South have severely hampered those of us who for many years have tried to set the groundwork for public employees to negotiate for pay and other benefits.

Unfortunately, Georgia law is mostly silent on collective bargaining as it pertains to public employees with two exceptions: public school teachers under OCGA § 20-2-989.10 are specifically prohibited from bargaining, and certain city fire fighters under OCGA § 25-5-4 are specially allowed to bargain. Surprisingly as good as that sounds, as of 2009, there is not a single fire fighter group or any public safety group in Georgia that has collective bargaining. The biggest problem we face is that our governments are not required by any law to recognize any union, association, or other group for the purpose of collective bargaining. In fact, state contract law under OCGA § 32-4-113 appears to specifically prohibit municipal governments from entering into contracts with city employees, except when authorized by law.

While there is no state law recognizing the right of any police officers to organize as a bargaining unit, there are several laws that prohibit police officers and other public employees from participating in or encouraging others to participate in any job action, i.e., strike, slow down, sick outs, etc. OCGA § 45-19-1 through 45-19-4 identifies several prohibitions and consequences of most job actions a traditional union might consider. Of course, police officers have the additional hurdles of professional ethics standards, departmental policies, and an oath of office to consider prior to any police employee bargaining activity.

Currently, there is no federal assistance for local and state employees in Georgia who wish to organize as a collective bargaining unit. The National Labor Relations Authority (NLRA) serves as an oversight and resource for unionized employees; however, it specifically exempts state and local governments from its purview. All of this means that there is presently no legal mechanism in place to compel a Georgia public employer to recognize any employee group, election, letter of intent, contract, or any other employee attempts to express their concerns.

Over the years, there have been several state and federal legislative attempts to institute collective bargaining rights for Georgia police officers and other public employees. In Georgia, at least two attempts have been made in the state legislature: one (SB 668) in 1997 and another (HB 606) in 2005. Neither bill ever came up for debate in its assigned committee, and both died with very little support from Georgia law enforcement officers other than the PBA of Georgia and a couple other employee groups. Currently, in the U.S. Congress there are two bills that virtually every public employee group of any consequence is fighting to get passed. HR 413 and S. 1611 are nearly identical pieces of legislation intended to give public safety employees the opportunity to organize for collective bargaining purposes. It is sad to note that both bills are nearly identical to legislation that has been introduced and died in Congress over the last two decades.

HR 413 and S. 1611 are very weak bargaining bills, but are a good starting place for public safety officers in states like Georgia. The biggest weakness of these bills is the lack of binding arbitration. Under the current proposed legislation, your government would be required to meet with a duly recognized employee group, but they would not be required to honor your recommendations or demands. As an example, assume your employee group determines you need a 10% pay raise, but

your city government says they will only give you a 3% raise. An arbitrator comes in and looks at your evidence supporting a 10% raise and the city government's evidence supporting a 3% raise. Let's assume the arbitrator decides that the 10% raise is well justified. It looks good for a 10% raise, right? Wrong, without binding arbitration this is just the arbitrator's opinion and while he or she supports your request, the city does not have to accept the arbitrator's decision.

What happens if either bill passes and is signed into law by the President? The National Labor Relations Authority will have 180 days to determine if Georgia law meets the minimum requirements of the collective bargaining law as outlined by these bills (as you know, it does not). The state legislature will have two years to pass legislation comparable or better than HR 413 or S 1611. However, if the state or any employer is not satisfied with the initial decision by the NLRA, then they have 60 days to appeal the decision to any U. S. Court of Appeals (which could take years to resolve) and the legislative time clock is on hold. If the state loses its appeal and the legislature fails to meet its deadline or the minimum standards, then the NLRA would establish collective bargaining guidelines for Georgia (which would surely be better for the employees). Of course, Congress could decide in the meantime that it had made a mistake and vote to repeal the legislation. No matter what passes, state officers will undoubtedly have the additional problem of the 10th Amendment of the U. S. Constitution, similar to what they have faced with FLSA issues.

As best as I can tell, every lobbyist in Washington who deals with public safety organizations is saying a collective bargaining bill will pass next year. However, for those of us who have been through this so many times, it is important to remember that Southern Senators (both Democrats and Republicans) killed this legislation in 2008. Senator Saxby Chambliss (R) of Georgia was instrumental in this effort, even after being asked by PBA of Georgia and other groups to support it. As a result of his action on this and other issues, Chambliss suffered a brief scare during his 2008 re-election bid when he failed to win by a clear majority during the general election and had to go through a run-off in December of last year.

The previous tactic of killing the collective bargaining bills by amending them to death will surely be tried again by southern senators. In this case, the Democrat majority in the Senate will not be enough and public safety officers across the South must attempt to solicit a firm commitment from their senators to support the passage of this legislation. For Georgia officers, favorable federal legislation is our only hope for collective bargaining, and everyone who wants to have the opportunity for fair pay and benefits needs to work to pass these bills.