

H. B. 2070

(By Delegate Caputo)

[Introduced January 15, 2015; referred to the
Committee on Political Subdivisions then 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 fire departments employed by political subdivisions; providing for the right of self-organization; allowing designation of an exclusive representative agent; imposing a 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 hearing before Civil Service Commission; providing judicial review; specifying powers and duties of the 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 FIRE

1 **DEPARTMENTS.**

2 **§8-15B-1. Definitions.**

3 As used in this article:

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

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

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

12 "Political subdivision" means, and is limited to, any municipality within the state.

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

19 **§8-15B-2. Right to self-organization and exclusive representation; dues.**

20 (a) Firefighters have, and are protected in the exercise of, the right of self-organization to
21 form and join any employee organization, to meet and confer with their employers through
22 representatives of their own choosing on questions of wages, hours and other conditions of

1 employment, except to strike, for the purpose of contracting for rights, free from actual interference,
2 restraint or coercion. An employee organization duly designated to represent the firefighters
3 employed by a political subdivision shall be the exclusive contracting agent for all firefighters so
4 employed. The organization shall act, negotiate agreements and contract for rights for all firefighters
5 and is responsible for representing the interests of all firefighters.

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

19 **§8-15B-3. Board of arbitration; duty to meet and confer with employees and arbitrate;**
20 **procedures.**

21 (a) The political subdivision and the employee organization recognized or certified as the
22 exclusive contracting agent shall contract for all employees' rights. Representatives of the political

1 subdivision and the employee organization shall meet at reasonable times, including meetings
2 appropriately related to the budget making process, and shall confer in good faith with respect to
3 wages, hours and other conditions of employment, or the negotiation of an agreement or any
4 questions arising thereunder, and shall execute a written contract incorporating any agreement
5 reached. Neither party may be compelled to agree to a proposal or make a concession.

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

22 (c) The chair of the board of arbitration shall establish reasonable dates and places of hearing.

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

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

15 (1) Prior agreements, if any, between the political subdivision and the employee organization;

16 (2) Comparison of the issues submitted to final offer settlement relative to the employees in
17 the contracting unit involved with those issues related to other public and private employees doing
18 comparable work, giving consideration to factors peculiar to the area and classification involved;

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

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

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

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

6 (e) Any arbitration decision as well as any written agreement between a political subdivision
7 and an employee organization determining the terms and conditions of employment of firefighters
8 shall contain the following notice:

9 "It is agreed by the parties that any provision contained herein requiring legislative action to
10 permit its implementation by amendment of law or by providing the additional funds therefor, will
11 not become effective until the appropriate legislative body has given approval."

12 **§8-15B-4. Prohibited acts; hearings.**

13 (a) Political subdivisions are prohibited from:

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

16 (2) Dominating or interfering with the formation or administration of any employee
17 organization;

18 (3) Discharging or otherwise discriminating against a firefighter because he or she has signed
19 or filed any petition, affidavit or complaint or given information or testimony pursuant to this article;

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

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

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

2 (b) Employee organizations are prohibited from:

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

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

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

8 (4) Striking against or withholding their members' services from a political subdivision.

9 Firefighters who are absent from work without permission are presumed to have engaged in a strike
10 unless evidence of illness or other good cause is presented by each firefighter for each absence; or

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

12 (c) Any firefighter who engages in a concerted strike against a political subdivision or
13 withholds services from a political subdivision shall be suspended from duty for a period not to
14 exceed six months without pay and the employee organization to which any striking firefighter
15 belongs shall lose its right for six months to have the monthly amount of dues withheld for all of its
16 members' pay by the employer. The treasurer or chief financial officer of the political subdivision
17 may not issue any warrant or check to any suspended firefighter for the payment of wages which
18 might otherwise be payable during that period nor may the treasurer or chief financial officer issue
19 any warrant or check for the monthly amount of dues of members of the employee organization to
20 that organization as required by subsection (b), section two of this article.

21 (d) Any private citizen of a political subdivision against which a prohibited act has been
22 committed may seek a writ of mandamus or any other remedy which is authorized by law to enforce

1 compliance with this subdivision by any treasurer or chief financial officer.

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

6 (2) The commission may make and enter an order dismissing the complaint or may conduct
7 an investigation or hold a hearing on the complaint. The firefighter, employee organization or
8 political subdivision complained of has the right to file an answer to the complaint or any amended
9 complaints within twenty days after the service of the complaint. If a hearing is ordered, the
10 commission shall set the time and place for the hearing, which time and place may be changed by
11 the commission at the request of one of the parties for good cause shown.

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

15 (4) The commission is not bound by the rules of evidence promulgated by the Supreme Court
16 of Appeals and the commissioner has the power of subpoena and to administer oaths. A transcript
17 of the testimony taken at any hearing before the commission shall be filed in the office of the
18 commission and be opened for inspection by either of the parties or their authorized representatives.
19 The commission shall bear the cost of producing the transcript.

20 (f) (1) If, upon all the testimony and evidence, the commission determines that a prohibited
21 practice has been committed, it shall state its findings of fact in writing and shall issue and cause to
22 be served on the party committing the prohibited practice an order requiring the employee

1 organization or the political subdivision to cease and desist from the prohibited practice. The
2 commission may take any further affirmative action as will comply with the provisions of this
3 section including, but not limited to, the withdrawal of certification of an employee organization
4 established by or assisted in its establishment by any prohibited practice.

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

8 (g) If a firefighter, employee organization or political subdivision refuses to comply with an
9 order from the commission and fails to appeal the order as hereinafter provided, the commission
10 shall request the Attorney General of West Virginia to seek injunctive relief in the circuit court of
11 the county where the prohibited act was or is being committed.

12 **§8-15B-5. Judicial review.**

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

16 (b) An action appealing a decision of the commission may only be initiated in the circuit
17 court where the political subdivision is located. The appeal must be filed within ninety days from
18 the date of the entry by the commission of its final order. Upon an appeal being taken and docketed
19 with the clerk of the circuit court, the circuit court shall proceed to hear the appeal upon the original
20 record made before the commission. Any party adversely affected by a decision and final order of
21 the circuit court has the right to petition the Supreme Court of Appeals for a review of the decision
22 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 fire departments. The bill also creates duties for the firefighters' Civil Service Commissions.

This article is new; therefore, it has been completely underscored.