

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 83

BY SENATOR YOST

[Introduced January 13, 2016;

Referred to the Committee on Labor; and then to the

Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 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
 OR FIRE DEPARTMENTS.**

§8-15B-1. Definitions.

1 As used in this article:

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

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

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

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

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

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

§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
4 of employment, except to strike, for the purpose of contracting for rights, free from actual
5 interference, restraint or coercion: *Provided*, That an employee organization duly designated to
6 represent the firefighters or policemen employed by a political subdivision shall be the exclusive
7 contracting agent for all firefighters or policemen so employed. The organization shall act,
8 negotiate agreements and contract for rights for all firefighters or policemen and is responsible
9 for representing the interests 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
13 the firefighters or policemen employed by the political subdivision designates the employee

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

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

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

9 (b) If, after a reasonable period of negotiations concerning wages, hours and other
10 conditions of employment, a dispute exists between the political subdivision and the employee
11 organization, or if no agreement has been reached on wages, hours and other conditions of
12 employment sixty days prior to the final date for the setting of the budget of the political

13 subdivision, either party or the parties jointly may request arbitration of the issue or issues in
14 dispute by a board of arbitration. The Board of Arbitration shall be composed of three persons,
15 one appointed by the political subdivision, one appointed by the employee organization and a
16 third member to be agreed upon by the parties. The members of the board representing the
17 political subdivision and the employee organization shall be named within five days from the date
18 of the request for the appointment of the board. If, after a period of five days from the date of the
19 appointment of the two arbitrators appointed by the political subdivision and the employee
20 organization, the third arbitrator has not been mutually agreed upon, then either arbitrator may
21 request the federal mediation and conciliation service to furnish a list of five members from its list
22 of arbitrators. Within five days after the receipt of the list, the representative of the political
23 subdivision and the employee organization shall each strike two names from the list. The
24 individual whose name remains on the list is the third arbitrator. The third arbitrator is the
25 chairman of the Board of Arbitration.

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

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

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

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

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

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

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

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

56 (e) Any arbitration decision as well as any written agreement between a political
57 subdivision and an employee organization determining the terms and conditions of employment
58 of firefighters and policemen shall contain the following notice: "It is agreed by the parties that
59 any provision contained herein requiring legislative action to permit its implementation by

60 amendment of law or by providing the additional funds therefor, will not become effective until the
61 appropriate legislative body has given approval."

§8-15B-4. Prohibited acts; hearings.

1 (a) Political subdivisions are prohibited from:

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

4 (2) Dominating or interfering with the formation or administration of any employee
5 organization;

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

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

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

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

13 (b) Employee organizations are prohibited from:

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

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

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

19 (4) Striking against or withholding their members' services from a political subdivision;

20 Provided, That firefighters or policemen who are absent from work without permission are

21 presumed to have engaged in a strike unless evidence of illness or other good cause is presented
22 by each firefighter or policeman for each absence; or

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

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

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

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

41 (2) The commission may make and enter an order dismissing the complaint or may
42 conduct an investigation or hold a hearing on the complaint. The firefighter or policeman,
43 employee organization or political subdivision so complained of have the right to file an answer to
44 the complaint, or any amended complaints, within twenty days after the service of the complaint.

45 If a hearing is ordered, the commission shall set the time and place for the hearing, which time
46 and place may be changed by the commission at the request of one of the parties for good cause
47 shown.

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

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

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

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

66 (g) In the event that a firefighter or policeman, employee organization or political
67 subdivision refuses to comply with an order from the commission and fails to appeal the order as
68 hereinafter provided, the commission shall request the Attorney General of West Virginia to seek

69 injunctive relief in the circuit court of the county where the prohibited act was or is being
70 committed.

§8-15B-5. Judicial review.

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

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

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.