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## Coates' Canons Blog: Is Collective Bargaining in Your Future?

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Article: <https://canons.sog.unc.edu/is-collective-bargaining-in-your-future/>

This entry was posted on July 27, 2010 and is filed under Employment, Miscellaneous

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**UPDATE November 2013: Congress did not enact the bill to create the Public Safety Employer-Employee Cooperation Act, discussed in this post. For the time being there does not appear to be any substantial federal impetus that would force units of government in North Carolina to engage in collective bargaining. The answer to the question “Is Collective Bargaining in Your Future” appears to be No.**

North Carolina law prohibits units of government from engaging in collective bargaining with employee unions. That is the **law** right now. No collective bargaining agreements, no union contracts.

A bill that has passed the U.S. House of Representatives (as part of an appropriations act) and is currently being considered in the Senate could override that state law and bring collective bargaining to state and local government in this state. It would be the biggest change in governmental employment relations in North Carolina in a long, long time.

That bill is the Public Safety Employer-Employee Cooperation Act (the PSEECA). Here's how it would work, if in fact it passes the Senate and the President signs it into law.

### The Basic Process

It would apply only to police, firefighters, and emergency medical services personnel. It would not apply to teachers or sanitation workers or parks and recreation employees or public works employees. It would apply to sheriffs' deputies (but not unsworn jailers or detention officers) and highway patrol officers.

Police, fire, and emergency medical service personnel working for a city or a county or a state agency could require their employer to engage in collective bargaining with them. Interested employees would start the process by attempting to form a bargaining unit. Rules would have to be adopted under the PSEECA spelling out just how that process would work, but it would likely involve an election among the employees who would be covered by the bargaining unit. If the employees—say, the non-supervisory firefighters employed by a city—formed a bargaining unit, the employer would be obligated to bargain with them. Employees in a city, county, or state agency might, of course, choose not to start the process, not to form a bargaining unit.

Once the bargaining unit was formed and the obligation for bargaining kicked in, then the employer would be required to send representatives to the bargaining table to meet and negotiate with representatives of the bargaining unit. The bargaining unit might well have chosen to affiliate with a larger union, and if it has it may get assistance at the bargaining table.

Both sides would be required to bargain, in good faith, over wages, hours, and terms and conditions of employment. Other topics could be considered within the scope of the negotiations, but North Carolina law could continue to prohibit public employee strikes. There would be (under rules yet to be adopted) mechanisms in place to resolve impasses. The final product would be a collective bargaining agreement, spelling out rules governing the employment relationship for the life of the agreement, often two years or three years.

Once the representatives of the employer and the bargaining unit have struck a deal, the resulting proposed collective bargaining agreement would have to be submitted for approval by the employer (the city council, the county commissioners, the state agency) and by the members of the bargaining unit. Once both sides agreed, the agreement would go into effect.

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The agreement would be enforceable in court.

### **Implications for Cities, Counties, and State Agencies**

Proponents of the legislation point to, among other potential positive effects, the possibility of greater regularity and predictability in employment relations. It seems certain that the creation of a bargaining unit among covered employees and the ratification of a collective bargaining agreement would have a number of very significant implications for public employers in North Carolina.

For one, elected officers of a bargaining unit become the sole representatives of the employees in the bargaining unit. The employer is prohibited from engaging in discussions with individual employees over matters that are covered by the collective bargaining agreement. Maybe some employees in the bargaining unit would choose not to join the union. That would almost certainly be permitted under rules that would be adopted, as North Carolina is a “right to work” state right now with respect to unions in private, non-governmental employment. Under right-to-work laws like North Carolina’s, employees do not have to join the union and do not have to pay union dues. But they are still represented exclusively by the officers of the bargaining unit and bound just as if they were themselves union members.

For another, grievance procedures are likely to work very differently. Under common practice in North Carolina government now, employees who are displeased by an employment action can pursue a grievance under a grievance policy unilaterally adopted by the employer. Typically, that grievance procedure will involve several steps of appeal, culminating in a decision by a high-ranking official, perhaps the city or county manager, that is final and not appealable from that point. Under collective bargaining agreements, it is common that decisions of the employer can be appealed by the union on behalf of the employee through some sort of arbitration process.

For a third, the city or county or state agency will have to adjust to a new reality of employing some of its workers under a collective bargaining agreement and others under traditional non-union structures. It does not take a great deal of imagination to project that difficulties may arise from such a distinction.

### **Getting from Here to There**

The U.S. House has passed the PSEECA. The Senate is now considering it. If it becomes law, here is how the changes would come to North Carolina.

North Carolina would have about two years to enact a comprehensive law that would give public safety employees the collective bargaining rights described above. A **bill** of that type was introduced into the General Assembly in 2009 but went nowhere—not surprisingly, in the absence of compelling federal law.

If the General Assembly failed to enact such a law, then the Federal Labor Relations Authority (the agency that oversees collective bargaining with unionized federal government employees) would step in and set the rules for governmental collective bargaining in this state.

### **Is This Really Going to Happen?**

Who knows? Bills of this sort have been introduced in every session of Congress since 1995. In 2007 the bill passed the House but was never taken up by the Senate. This time, it has passed the House again and the Democratic majority leadership in the Senate has spoken as if the Senate would take it up, but so far that has not happened. For the time being, we wait and see.

## **Links**

- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_95/GS\\_95-98.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_95/GS_95-98.html)
- [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=h1651&submitButton=Go](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=h1651&submitButton=Go)