

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS



Statement of

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on

H.R. 980, the Public Safety
Employer-Employee Cooperation Act

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Labor and Pensions
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Chairman Andrews, Ranking Member Kline, and distinguished members of the Subcommittee. My name is Kevin O'Connor and I am the Assistant to the General President of the International Association of Fire Fighters (IAFF). I am pleased to have the opportunity to appear before you today on behalf of General President Schaitberger and the 283,000 men and women who comprise the IAFF.

Before I begin, allow me to express my appreciation to you, Mr. Chairman, for holding this hearing on this very important topic. You have a long, distinguished history of championing the issues of concern to America's fire fighters. Your leadership as Co-Chair of the Congressional Fire Services Caucus is recognized and appreciated by both the career and volunteer fire services. I am looking forward to working with you and the committee in the coming weeks as this legislation moves forward. And I would be remiss if I did not also commend the extraordinary leadership of the author of this legislation, Representative Dale Kildee. Representative Kildee first introduced this bill a dozen years ago, and has remained its most steadfast champion. The nation's fire fighters and law enforcement officers are indebted to him.

Mr. Chairman, I appear before you today not only as a representative of the IAFF, but also as someone who understands from first hand experience the significance of this issue. I spent my entire adult life in the fire service, starting as a volunteer fire fighter, serving for 15 years as a professional fire fighter and E.M.T. in the Baltimore County, Maryland Fire Department, and serving for 9 years as President of my local union, the Baltimore County Fire Fighters Association and 6 years as President of the 7,500 member Maryland State and District of Columbia Fire Fighters Association. From this vantage point, I not only know what it's like to work as a fire fighter, I also know just how much can be achieved through the bargaining process.

I have many memories of those years sitting across the bargaining table negotiating with five different Fire Chiefs and four County Executives—three Democrats and one Republican. Obviously, we had areas of disagreement and agreement. I had some successes and my share of defeats. But the one thing I am absolutely certain of, and to which those Chiefs and County Executives would no doubt agree, is that the citizens of Baltimore County are safer today because of what we achieved together. It was a structured, cooperative process that benefited both the 700,000 taxpaying citizens of Baltimore County, and the members of the Baltimore County Fire Department.

Fundamental Fairness

In essence, this hearing is about fundamental fairness for fire fighters and police officers. Today, the vast majority of American workers—private sector employees, non-profit association employees, transportation workers, federal government employees, and even congressional staff—have the right to bargain collectively. As I listened to the debate earlier this year over the Employee Free Choice Act, I was struck by how universally acknowledged the right to bargain has become. While people can, and do, argue over many of the details of labor law, few voices can be heard questioning the fundamental right of employees to discuss how they do their jobs with their employers. I find it noteworthy that the most recent group of employees to gain collective bargaining rights owe this right to the conservative 104th Congress led by House

Speaker Newt Gingrich and Senate Majority Leader Bob Dole. As a result of a key provision of the Contract with America, the Capitol Police Force who are protecting us here today enjoy collective bargaining rights.

I also note that the National Association of Counties, one of the largest organizations representing the employers with whom we negotiate, has expressly endorsed collective bargaining for all non-supervisory employees as a means to promote “positive labor-management relationships” and “provide workers with safe and meaningful employment.”

Despite this near-universal acceptance of the right to bargain, tens of thousands of our nation’s fire fighters and police officers on the frontlines of homeland security are unfairly denied this basic protection. In too many states, first responders are prevented from having a conversation with their employer about how to improve fundamental services and protect the public. Let me be clear: this is not about the ability to strike, which H.R. 980 expressly outlaws. No first responder that I know believes in strikes – it contradicts what protecting the public safety means. Nor is it about union organizing, since the IAFF already represents over 85% of fire fighters nationally—including those in Right to Work states. In fact, we may be the only national union that does not even have an organizing department.

This is about fundamental fairness: the right to talk about how to best protect the public safety should be provided to the first responders who risk so much to keep our nation safe.

Collective Bargaining in the Public Safety Arena

Perhaps in no occupation is the need for collective bargaining greater than in public safety. Fire fighting is the nation’s most dangerous profession. One-third of our members are injured in the line of duty each year. In 2007, approximately 100 of my brothers and sisters will pay the ultimate price. Thousands of times today, in every corner of America, an alarm will ring in a firehouse and men and women will bravely place themselves in harm’s way.

Fire fighters take these risks for one reason: we are dedicated to protecting the health and safety of our neighbors and our communities. It is this same dedication and commitment to public safety that we bring to the bargaining table. The issues that are of paramount importance to us are often not things such as wages and benefits, the traditional subjects of bargaining. Rather, we are focused on how we can do our jobs better and more safely and improve the level of service that we provide to our communities.

Frontline emergency responders often view public safety through a different lens than public safety directors or city managers. We are the ones who rush into the burning buildings, dive into frigid waters, and perform countless rescues each year. We believe we have a valuable perspective to share, and I am here today to ask you to grant us a seat at the table.

Effective Local Emergency Response is a Cornerstone of Homeland Security

September 11, 2001 demonstrated the courage and sacrifice of our fire fighters and police officers. On that tragic day, I lost 343 of my brother fire fighters, each of whom was a union

member who enjoyed collective bargaining. I should note that even though they were working without a ratified contract, these dedicated fire fighters performed beyond the call of duty and made the ultimate sacrifice. All first responders place duty above all else. With or without collective bargaining, we will always place serving the public as our first and foremost priority.

But September 11 was not just a day of tragedy and heroism. It also fundamentally changed the way our nation views emergency response. Prior to 9/11, public safety was viewed almost exclusively as a local government function. No more. Americans now universally understand that homeland security is a vital federal government responsibility. And effective local emergency response is a cornerstone of homeland security. Homeland security starts with hometown security.

Thus, the federal government embarked on the creation of a new security paradigm that embraces active federal government involvement in local emergency response preparedness. The importance of this new paradigm was further highlighted when a devastating hurricane in the Gulf Coast took hundreds of lives and stretched emergency response capabilities to the breaking point.

Following the issuance of Homeland Security Presidential Directive-8 (HSPD-8), which declared it a federal responsibility to “strengthen preparedness capabilities of Federal, State, and local entities,” Congress and the Executive Branch worked together to create a network of programs that permanently linked federal and local response activities. These initiatives are manifested in the National Response Plan, the National Preparedness Goal, the National Incident Management System, in the coordination of several training and exercise programs including TOPOFF (a series of exercises designed to help states and localities gain an objective assessment of their capacity to prevent or respond to and recover from a disaster), and in related guidance to states in aligning state homeland security strategies with the National Preparedness Goal. Through these executive and statutory precedents, and combined with \$18 billion in grants to state and local governments since 9/11, the federal government has articulated that an effective emergency response at the local level is a fundamental building block of homeland security, critical to “strengthen preparedness capabilities.”

It is therefore surprising and somewhat disappointing to hear some argue that it is inappropriate for the federal government to ensure that emergency responders have a voice in the workplace. Some of those who today oppose any federal involvement in ensuring that fire fighters have the opportunity to raise safety issues with their employer are the same people who gave speeches on the floor of the U.S. House of Representatives lauding their heroism following the 9/11 attacks.

Ensuring the ability of emergency responders to work cooperatively with the local officials who manage emergency response is every bit as much a legitimate federal government responsibility as any homeland security initiative Congress has undertaken in the past five years.

Public Safety Collective Bargaining Works

Studies have consistently shown that collective bargaining in the public sector improves the delivery of emergency services. The Secretary of Labor's Task Force on Excellence in State and

Local Government, a national bi-partisan study group evaluating means to improve delivery of state and local government services, found in 1996 that "collective bargaining relationships, applied in cooperative, service-oriented ways, provide the most consistently valuable structure for beginning and sustaining workplace partnership with effective service results."

Real world examples abound to verify these findings. Almost every day in almost every corner of America, representatives of frontline fire fighters are sitting down with their fire chief or public safety director to discuss how to do their job more effectively and more safely.

The Phoenix, Arizona Fire Department is recognized as one of the preeminent fire departments in the world, a status achieved largely through labor-management cooperation. According to Chief Dennis Compton, who also served as the President of the International Association of Fire Chiefs: *"A positive labor/management process can form the foundation for planning and problem-solving in a fire department. When labor and management leaders work together to build mutual trust, mutual respect, and a strong commitment to service, it helps focus the fire department on what is truly most important...providing excellent service to the customers and strong support to the members who serve them. I know this is possible because for 32 years, I had the honor of serving in two fire departments in Phoenix and Mesa, Arizona who transformed this concept into reality. The labor/management process established in the Phoenix Fire Department in the early 1980's is the principal reason that the organization has earned an international reputation as arguably the most effective public safety organization in the world."*

In Kansas City, Missouri, the Labor-Management Committee works together to address almost all the significant operational issues facing the Fire Department. In recent years, the Committee created a joint plan that identified areas of greatest need, and—just as significantly—identified possible funding sources to help meet those needs. The result has been an increase in both staffing and apparatus, with minimal drain on local treasury. Kansas City Chief Richard "Smokey" Dyer, also a past president of the International Association of Fire Chiefs, echoes Compton's views: *"I've been a Chief in departments with collective bargaining and without. The bargaining process is, by far, preferable because it establishes structured processes in which we can jointly address safety, service delivery and other issues impacting public safety."*

In New York City, a five-year collective bargaining agreement was ratified last year that included a long-term solution to FDNY's staffing shortage. The density and large number of high rise buildings in New York pose unique problems for the city's emergency response agencies. The agreement will enable the Fire Department to more effectively respond to the extraordinarily labor-intensive tasks required to perform rescue operations in that challenging urban environment.

In Hennepin County, Minnesota, the local fire fighters union conducted extensive research into ambulance and stretcher designs after city paramedics began complaining of back and neck problems. The union made recommendations to purchase new ambulance suspensions and ergonomic stretchers, but the Fire Department balked because it didn't have sufficient budgetary authority. So the union worked with management through the collective bargaining process to examine the purchases in the overall context of workers compensation, disability benefits, and

sick leave. The result was an agreement that allowed the city to purchase the newer technology, resulting in healthier paramedics and a savings to taxpayers.

In Omaha, Nebraska, collective bargaining has produced measurable staffing and health and safety improvements throughout the Fire Department resulting in safer fire fighters and a safer community. Before collective bargaining, the Omaha Fire Department lost one fire fighter in the line of duty every five years. Since fire fighters were provided with a means to provide input about health and safety aspects of their jobs, they haven't lost a fire fighter in the last twelve years. This was achieved by increasing staffing to meet national consensus standards for safe fireground operations, and by securing enclosed cabs on fire trucks. The bargaining process in Omaha also has also addressed the dangerous health hazards posed by asbestos at fire stations and provided hearing protection for fire fighters.

In Miami, Florida, the local fire fighter union was able to offer data that persuaded city leaders to establish one of the nation's foremost fire department-based EMS delivery models. The EMS system, which has now been working effectively for several years, reduced response times and reduced costs to taxpayers. Based on the Miami experience, the model has been adopted by several other fire departments. In almost every instance, the new system was a joint labor-management initiative. According to Miami Fire Chief William Bryson "The bottom line is collective bargaining worked to improve services in our city."

From my own experiences in Baltimore County, through our bargaining process we established a labor/management, a quality of work life, and safety and health committees. Collectively, these committees assisted the department in evaluating our response profiles and levels of service, selecting the appropriate breathing apparatus, turnout clothing and other safety equipment, abating diesel exhaust emissions in our 26 stations, developing a wellness and fitness initiative and cooperatively taking over a 55 member private-industrial fire department and integrating their personnel and emergency operations into the Baltimore County Fire Department.

And in your District, Ranking Member Kline, in Chaska, Minnesota, the city's fire department stepped up to provide certified ambulance service when a previous emergency service provider failed to meet the city's public safety standards. Aided by a collective bargaining process, the Fire Department earned the necessary certification and assumed the responsibility of providing effective paramedic services to the citizens of Chaska.

Such examples are just a few of the literally thousands of beneficial public safety initiatives that have been achieved through labor-management cooperation.

Moreover, just as there are countless examples of the benefits of collective bargaining, there is also ample evidence that the absence of a bargaining relationship is the source of significant problems. At its most fundamental level, collective bargaining is simply a process for resolving disputes. Without such a process in place, disputes often find other outlets that sometimes prove dangerous and costly. An absence of collective bargaining for fire fighters and police officers is, at a minimum, a missed opportunity to improve the delivery of emergency services.

Consider the case of Dean Bitner, President of the Springdale, Arkansas Professional Fire Fighters. Without the ability to bring issues to the bargaining table, Bitner took his concerns about understaffing and inadequate fire protection to the city council. The fire department retaliated by passing over Bitner for promotion to Captain, despite his having the highest scores on the civil service exam. When Bitner filed suit alleging violation of his first amendment rights, he was demoted and removed from a pension committee. And when he asked the Fire Chief why he was not allowed serve on the pension committee, he was promptly fired for insubordination.

In the face of these unwarranted assaults on his rights, a federal court ordered the city to reinstate Bitner and promote him to Captain. But that was only the beginning. The court also awarded Bitner hundreds of thousands of dollars in damages including back wages and compensatory damages, and ordered the city to pay Bitner's attorneys' fees.

A similar story took place in LeMay Township, Missouri. Fire fighter David Foote was fired for telling a meeting of the local Republican Party (of which he was an active member) about the fire department's refusal to replace unsafe personal protective gear. Like Bitner, Foote had to file suit to obtain justice. He was ordered to be rehired and awarded in excess of \$400,000 in damages.

Dean Bitner and David Foote are not alone. IAFF attorneys have handled over a dozen first amendment cases in non-bargaining states in recent years, every single one of which resulted in taxpayers being forced to pay large settlements to fire fighters who were wrongfully fired or disciplined for expressing their views.

But the lesson of these cases is not just that cities have wasted time and millions of taxpayer dollars. The more significant lesson is that lawsuits and politics are a poor substitute for collective bargaining. Had Bitner and Foote had the opportunity to raise their concerns in a collective bargaining environment, and had the jurisdictions of Springdale and LeMay Township had an established process for resolving grievances and appealing disciplinary actions, none of this would have occurred. Both the localities and their fire fighters could have spent their time, energy, and money where it belongs—on protecting the public safety.

Not surprisingly, the problems associated with the absence of a bargaining relationship take their toll on employees. The inability to bring important workplace issues to the attention of management harms morale, and can undermine the esprit de corps essential in public safety occupations. This is especially true in communities where fire fighters without bargaining rights engage in mutual aid responses alongside fire fighters who are protected by bargaining laws. The disparate treatment is painfully obviously to those denied a voice in the workplace, and we have witness high rates of turnover in many of these fire departments. Ultimately, these morale problems jeopardize public safety.

The Public Safety Employer-Employee Cooperation Act (HR 980)

In order to ensure that collective bargaining is universally available to those public safety officers who want it, Representative Kildee worked with the IAFF, FOP, and other organizations representing law enforcement officers to craft the Public Safety Employee-Employer

Cooperation Act. Let me say first that we don't call it the Cooperation Act for nothing. The heart of the bill is promoting cooperation between public safety employers and employees whose relationship is critical to the effective delivery of emergency services. The purpose of this bill is to have fifty state laws that give fire fighters and police officers access to a bargaining process that fosters cooperation between public safety officers and the agencies that employ them, a process that is working well in 30 states and creating an atmosphere in which all parties are stakeholders in improving safety and making communities more secure. Rather than imposing a single federal labor relations law on states, the goal of this legislation is to have fifty state laws that are written by states and administered by state agencies.

To accomplish this, the legislation establishes four minimum standards: the right to form and join a union; the right to bargain over working conditions; the right to sign legally enforceable contracts; and the right to utilize an impasse resolution procedure. The impasse mechanism does *not* need to be binding on the parties. For example, many states use mediators or fact-finders to help resolve disputes.

Just as important as what the bill requires, is what it does not require. It does not require binding arbitration to resolve disputes; does not allow public safety officers to strike; does not take away authority of states and local jurisdictions to have ultimate say over all public safety and financial issues; does not require any specific method to certify unions; does not interfere with state "right-to-work" laws; and does not infringe on the rights of volunteer fire fighters.

The bill tasks the Federal Labor Relations Authority (FLRA), an entity with unparalleled expertise in public sector labor relations, to review state collective bargaining laws to see if they meet the minimum standards previously described. In states that already have a bargaining process that works to keep the public safe, as a majority of states do, there would be no further role for the federal government.

The minority of states that do not meet these minimum standards would have two years to enact their own public safety collective bargaining law that could be tailored to meet the emergency service needs of each state. The bill gives the utmost flexibility to states in crafting their own collective bargaining law so they can best use this tool to augment emergency response capability across their states. Once state legislation is enacted, FLRA would review it to determine whether it comports with the minimum standards.

Those states that decline the opportunity to author and administer their own collective bargaining law would be subject to regulations promulgated by the FLRA. The regulations would function as labor law in the state, and the agency would serve as the labor board for public safety employers and employees. Once a state subsequently adopts a bargaining law for public safety that complies with H.R. 980's minimum standards, the FLRA's authority immediately dissolves.

It is our hope and our belief that every state that has not already done so will take this opportunity to enact their own unique state bargaining law for fire fighters and law enforcement officers. Because the legislation leaves almost all the most significant labor issues to the states to resolve, we are confident that states will find ample incentive to enact and administer their own public safety collective bargaining law rather than come under federal authority.

Evolution of the Cooperation Act

The legislation before you today embodied in HR 980 is the result of many years of study, refinement and compromise. Since the IAFF first identified this legislation as our top priority, we have worked with both supporters and opponents of the legislation to attempt to address all concerns.

Earlier versions of the legislation contained a much longer list of standards that states must meet. It was Senator Judd Gregg, the long-time sponsor of the Senate version of the legislation, who encouraged us to pare down the criteria to the most minimal level.

We also added language expressly addressing concerns raised by supporters of “right to work” laws and volunteer fire fighters to make sure the Cooperation Act in no way conflicted with their goals.

Some Members of Congress who represent smaller jurisdictions raised concerns about the impact on small town America, which prompted us to agree to language allowing states to exempt small communities.

We extended the timeline for states to act, in recognition of the fact that many state legislatures meet only certain months of the year, and must plan for the consideration of major legislation well in advance.

And we worked closely with attorneys to assure that the bill comports with United States Supreme Court decisions. In light of the new, expansive federal role in Homeland Security, we do not believe any constitutional challenge would succeed. But we wanted to be sure our bill would withstand constitutional scrutiny based on precedent that did not consider recent homeland security enactments. I have attached to my statement a memo from an attorney explaining how the legislation was crafted consistent with Supreme Court precedents.

In sum, we are confident that the bill before you today addresses all legitimate, pragmatic concerns. It is through these efforts that the bill has come to the point where it enjoys such broad, bipartisan support. The legislation has already been cosponsored by a majority of the House of Representatives, as well as a majority of this committee. And the list of sponsors spans a wide cross-section of ideology and geography. We are proud that HR 980’s supporters range from some of the most conservative Republicans to the most liberal Democrats. It is a common sense proposal that engenders support across all spectrums.

Impact on States and Localities

Despite the far reaching significance of this legislation, HR 980 would impose at most a minimal burden on the overwhelming majority of states. As noted above, most states would be completely unaffected because they already fully comply with the minimum requirements of the legislation. But even in many of the states that do not currently comply, coming into full compliance would be relatively simple and inexpensive.

Many states without a statewide law provide bargaining for public safety officers through local ordinances. HR 980 specifically protects these local laws by limiting the authority of the FLRA to enforce its regulations in cities and counties that meet the minimum requirements of the bill. States that have strong local laws would therefore retain their ability to pass the decisions about bargaining procedures to their localities.

Some states already have strong statewide laws that apply exclusively to fire fighters, and these states would have the option of either extending their existing law to other public safety employees or retraining their fire fighter-only law, while allowing FLRA to manage labor relations in other sectors.

And some states have a bargaining process but bar their courts from enforcing agreements. Simply requiring local agencies to live up to agreements they freely reach should not impose an undue burden.

Local Government Maintains Ultimate Control

At the end of the day, HR 980 does not require public agencies to reach any agreement or spend any money it does not believe is in the best public interest. There is nothing in the bill that infringes on the ability of government agencies to manage public safety operations however they see fit.

The bill does, however, require public safety employers to meet with the representatives of emergency responders to consider their views. In light of the fact that these domestic defenders are on the front lines in our nation's homeland security, Congress is fully justified in insisting that state and local officials sit down and talk.

But ultimately, government agencies retain the unfettered ability to simply say "NO" to any union proposals.

Conclusion

Since the days of the sweatshop environments that dominated our nation's factories at the beginning of the last century, collective bargaining is largely responsible for virtually all the reforms that have transformed the way Americans view work. In terms of public safety, collective bargaining has already transformed the emergency services of the majority of states in the nation, making safer our public safety officers, our communities, and our nation.

Collective bargaining is overwhelmingly used as a mechanism to enable labor and management to work together for their mutual benefit. The bill promotes conversation between public safety employer and employees. More than anything else, HR 980 establishes a process but does not mandate an outcome. Nowhere is this relationship more important than in the delivery of emergency services when lives are at stake. The right to be heard at work – collective bargaining – is a fundamental right, just as the public's right to depend upon emergency services is a fundamental right.

The Cooperation Act is about fairness and security—nothing more. Allow us a voice. Allow us a seat at the table. The enactment of HR 980 will protect both our first responders and the communities we serve, and make our nation safer and more secure.

I appreciate the opportunity to appear before this subcommittee and would be happy to answer any questions you may have.