Testimony Before the
House Subcommittee on
Health, Employment, Labor, and Pensions
on
H.R. 413, Public Safety-Employer-Employee Cooperation Act of 2009

by
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On Behalf of:
National League of Cities
National Association of Counties
National Sheriffs Association
National Association of Towns and Townships
National School Boards Association
International City-County Management Association
International Municipal Lawyers Association
International Public Management Association for Human Resources
National Public Employer Labor Relations Association
North Carolina League of Municipalities

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Chairman Andrews, Ranking Member Price and distinguished members, my name is Ellis Hankins and I am the executive director of the North Carolina League of Municipalities in Raleigh, NC. I am also an attorney and a member of the North Carolina Bar.

Thank you for granting me the opportunity to testify before your sub-committee and to speak on behalf of the nation's 3,066 counties, 19,000 cities and towns, 14,350 local school districts, their county and city elected and appointed officials, elected sheriffs, elected school board members, police chiefs, municipal lawyers, and state and local personnel and labor relations professionals.

I am here to express our strong opposition to H.R. 413, the "Public Safety Employer-Employee Cooperation Act of 2009" (Act) and ask that you not attempt to fix what is not broken. If enacted, H.R. 413 would undermine state, county and municipal autonomy; affect all states -- even those that currently permit collective bargaining; exacerbate the fiscal crisis that states, counties, and cities and towns are experiencing; interfere with the principles of federalism; and raise significant constitutional questions.

Before I express our reasons for opposing H.R. 413, I would like to make the following observations.

If adopted into law, H.R. 413 would:

- Grant every non-federal police officer, parole and probation and judicial officer, prison guard, firefighter and emergency medical technician employed by state and local governments the right to form and join a labor union;
- Direct local governments to recognize the employees' labor union;
- Require cities and towns to collectively bargain over hours, wages, and the terms and conditions of employment other than pensions;
- Require states and municipal governments to establish an impasse resolution process;
- Require that state courts enforce the rights established by this mandatory collective bargaining bill; and
- Direct every state – even if it currently recognizes employee collective bargaining rights – to conform to federal regulations around mandatory collective bargaining within two years of the bill's effective date and without regard to state or local laws.

For centuries, state and local governments have been making decisions about public personnel, including collective bargaining with respect to their public sector employees. When it was enacted, the National Labor Relations Act of 1934 recognized the separation between state and federal authority over collective bargaining. That Act, which regulated private sector employer-employee relations, specifically exempted state and local governments from coverage. H.R. 413 would run contrary to that by placing the federal government in charge of this historically state and local function.

Every state in the Union has in place a process that permits the voters to determine either directly or through their state and local elected officials the relationship between public sector employers and their employees. States like Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Mississippi, Missouri, New Mexico, North Dakota, Tennessee, Texas and West Virginia have consistently considered and rejected state legislation that would grant public safety officers that right to collectively bargain. Virginia and my state of North Carolina have long standing statutes that expressly prohibit collective bargaining in the public sector. Bills seeking to repeal those statutes have been introduced and debated, but not enacted.

None of the organizations or their memberships represented here necessarily opposes collective bargaining for public sector employees. Instead, we believe that the decisions affecting the employment relationships between employers and employees are best made at the state and local level by the elected officials who represent the citizens of the states, local governments and school systems in which these individuals work, and not the federal government.

The laws in 33 states and the District of Columbia permit their public safety officers to enter into collective bargaining arrangements with their employers; 17 do not or substantially limit collective bargaining. State and local elected officials, when making decisions about their employees, consider a host of factors, including the impact that wages, hours and conditions of employment will have on the fiscal conditions of their states and local governments; the values and priorities of their citizens; and the ability to effectively operate their governments.

I would now like to share with you our reasons for opposing this legislation.

H.R. 413 violates the principles of federalism and raises significant constitutional questions.

A fundamental principle of federalism is that the relationship between a state government and its employees, including employees who assist in discharging the state's police powers, should not be subject to federal interference unless there is a compelling reason.

The sponsors of H.R. 413 rely on the Commerce Clause of the U.S. Constitution as the authority to enact this measure. However, even the Congressional Research Service (CRS) questions whether the Commerce Clause provides sufficient authority to support this legislation. In its July 31, 2009 report on the Public Safety Employer-Employee Cooperation Act the authors wrote: "…recent decisions involving the Commerce Clause suggest that the regulation of labor-management relations for public safety officers may not be sufficiently related to commerce and may be invalidated, if challenged. The report goes on to cite a series of U.S. Supreme Court decisions that raise questions about whether the Commerce Clause grants the federal government the authority to involve itself in state and local labor-management relations for public safety officers.

Among the cases the report cited were *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison, 529 U.S. 598 (2000).* In *Lopez*, the Court was clear that one could not infer "general police power of the sort retained by the States" from the Commerce Clause." In *Morrison*, the Court was clear that intrastate violence not "targeted at methods of conducting interstate commerce always has been the province of the States." Those cases and others cast significant doubt on whether the state and local public safety operations are activities that substantially affect interstate commerce.

H.R. 413 also has Tenth Amendment implications. Unless states take action to meet the requirements of this Act, they will be subject to federal takeover of the collective bargaining scheme for public safety officers. The choice states are being given -- between either changing their laws to meet FLRA requirements, or be taken over by the FLRA -- seems to be a false one, because in both instances the autonomy of the state is usurped by federal action.

Please note that in my home state, North Carolina, a long standing statute expressly prohibits collective bargaining at the state and local government levels. That statute has been held constitutional by the federal courts. H.R. 413 would completely override that law enacted by the legislative branch of a sovereign state, and the same is true with respect to the State of Virginia. The federal mandate would be intrusive and completely at odds with existing state law in those two states, among others. For that reason and others, we believe there are strong arguments that this act would be unconstitutional.

H.R. 413 disregards the democratic decision making process at the state and local levels of government by seeking to replace local solutions with a one size fits all national solution.

H.R. 413 disrespects and disregards the laws that each and every state has adopted pertaining to the relationship between public sector employers and employees. These laws ensure that states, counties, and cities and towns provide their workers with excellent working conditions, competitive salaries, excellent health and pension benefits, and a working environment that is safe and appropriate. H.R. 413 also disrespects and disregards the state and local elected officials who have been chosen by their electorates to carry out these laws, and who must balance the needs of their employees and the citizens they represent. In short, H.R. 413 appears to be a solution in search of a problem; a one size fits all solution to a problem that does not exist – namely less than fair and equitable treatment of public sector employees.

H.R. 413 undermines the traditional relationship between employers and employees at the state and local level that have been in place and worked for centuries.

The Public Safety Employer-Employee Cooperation Act of 2009 would undermine the traditional relationship that exists between state and local elected officials, their employees, and the constituents they represent.

State and local governments everywhere strive to provide their workers with excellent salaries, benefits and working conditions that are consistent with the fiscal conditions, budgets and priorities of their respective communities, and this has worked well for centuries. Rather than foster "better cooperation," the organizations and governments I am representing believe this legislation would force states and localities to adopt standards that are different than their own and disregard existing state laws and ordinances that were developed to create an effective and efficient public sector workforce. Furthermore, it would place the needs of a select group of workers – public safety officers – in front of the larger needs of the community and other public sector employees. It would undermine state, county and municipal autonomy with respect to making fundamental employment decisions by mandating specific working conditions, including collective bargaining.

While each and every elected official values the service of their law enforcement and corrections officers, fire fighters and emergency medical personnel -- after all, public safety is an essential activity of every state, county, city and town – state and local elected officials also understand that first and foremost they have a responsibility to their citizens to determine how best to respond to the demands of the public sector workforce. There is no question that this includes an obligation to provide adequate salaries and benefits, fair employment policies, safe working conditions, and good training to all of their employees, including public safety employees. Failure to do so would make it much more difficult to attract and retain well qualified and committed public servants who can do their jobs safely and well. But this must be done within our fiscal means in a way that reflects the values of the citizens who elected them to office. But it goes beyond this. The goal of every elected official is to be fair to all of our employees, and not just those in public safety. Federal actions like the one proposed here will force us to treat one group of employees differently than another and may serve to deepen the fiscal crisis in local governments and end up hobbling the nation's economic recovery, something none of us in this room could possibly support.

H.R. 413, if enacted , will impose unfunded mandates that will place serious financial burdens on every state, county, city and town, undermine their already precarious fiscal conditions, and threaten the economic recovery currently taking place.

The profound fiscal crisis that most states, counties, cities and towns, and school systems currently are experiencing is yet another compelling reason to leave alone what is not broken. The additional costs are not fully known, but clearly H.R. 413 would increase the costs of public safety services.

State, county, city and town governments that currently do not collectively bargain with their employees would be forced to hire staff and implement procedures to ensure that the letter of the law is met. State, county, city and town governments that do have collective bargaining would also incur significant costs if they were required to alter their existing collective bargaining systems to comply with Federal Labor Relations Authority regulations.

States like Florida and Maine that would have to revamp their entire administrative and appeals process would incur significant costs. States like Oregon and Illinois, which might be required to reopen historic agreements, would be subject to the additional costs associated with renegotiating those contracts and the potential costs associated with changes in those agreements.

Such a mandate could not come at a worse time for states, counties, cities and towns, most of which are experiencing significant fiscal crises. According to the Center on Budget and Policy Priorities, states are projecting deficits totaling $196 billion in the next fiscal year, and according to the National League of Cities, cities and towns are projecting budget shortfalls totaling over $19 billion for the next fiscal year. The requirements set forth by H.R. 413 would contribute substantially to this crisis by placing increased fiscal demands on every state, county, city and town.

Before concluding my remarks, I would like to raise with you a number of additional concerns.

First, while this bill applies only to public safety officers, we are concerned that it opens the door to collective bargaining under these same rules for all state and local employees. If state and local elected officials must engage in collective bargaining with some employees under the rules of this legislation, it will be hard for them to justify not offering the same rights to other employees.

Second, this bill would affect more than the 17 states that currently do not have collective bargaining, even though supporters and proponents alike have said otherwise. The decision as to whether a state and its political subdivisions are in compliance with the intent of H.R. 413 would rest with the Federal Labor Relations Authority (FLRA), which has the authority to draft regulations defining the scope of collective bargaining. If H.R. 413 becomes law, the *State of Florida* will be required to move all legal matters related to collective bargaining out of an existing and well-established administrative entity and into the state courts. This requirement would undo years of legal precedents and would force the state and local governments to substantially redraft the rules and procedures that govern the collective bargaining and labor appeals process for public sector employees.

A similar problem would emerge in the *State of Maine* where the state legislature in 1969 enacted a comprehensive set of laws and administrative guidelines governing collective bargaining and dispute resolution in the public sector. In Maine, the Maine Labor Relations Board (MLRB) has helped employees and employers alike through union organizational activities, collective bargaining disputes and grievance resolution. However, under H.R. 413, Maine would no longer be able to maintain its MLRB for this purpose and would have to transfer that authority to the state courts.

The *State of Illinois* might be forced to amend its collective bargaining law and alter some of the rules governing negotiations on firearms. Current law prohibits negotiations on the type of firearms police officers may carry; but the FLRA may rule that firearms are subject to negotiation under "conditions of employment."

The *State of Ohio*, whose laws currently permit public sector workers to strike, would have to ban that right even though the citizens and elected officials of that state believe that public sector workers, including public safety officers, may strike.

Simply put, these examples document that under the Act, while you may think your collective bargaining laws and practices are fixed, the federal government may find that you are broken.

Without a complete legally mandated exemption for all states that currently have collective bargaining laws in place, there is the strong possibility that they will have to revisit their labor laws and collective bargaining procedures once the Federal Labor Relations Authority has issued regulations governing the ways in which wages and hours, conditions of employment, and other elements of collective bargaining agreements must be negotiated.

I want to conclude with the cautionary tale of Vallejo, California, a city of about 117,000 people in the San Francisco Bay area. In 2008, the City became insolvent, because of declining tax revenues and very expensive obligations in police and fire collective bargaining agreements. Salaries and benefits for public safety workers accounted for 75 percent of the general fund budget. The City also cited unsustainable current and future pension outlays (firefighters can retire at age 50 with a pension equal to 90 percent of salary). The unions were inflexible, and council members decided that they had no choice but to file a bankruptcy petition.

The U.S. Bankruptcy Appellate Panel of the Ninth Circuit affirmed the bankruptcy court's ruling that the City was insolvent and authorized the modification of collective bargaining agreements. The court rejected the unions' contention that the City somehow was obligated to accept a pre-bankruptcy offer that extended collective bargaining agreements by four years. It also agreed with the bankruptcy court's conclusion that the unions' argument "that Vallejo should have pillaged all of its component agency funds, ignored bond covenants, grant restrictions and normal [accounting] practices, to subsidize its general fund…defied fiscal prudence."

We urge Congress to resist imposing this mandate that could box more states and local governments into legally binding long term financial obligations that are not sustainable, and could place unreasonable limitations on the ability and flexibility of elected officials to reduce expenditures as necessary during times of financial emergency like we now are experiencing.

Finally, there is a terrible irony here. While the Congress prepares to force states and local governments to enter into collective bargaining arrangements that include the right to negotiate hours, wages and conditions of employment, it is unwilling to extend the same conditions of employment to its own police officers and those responsible for public safety in the federal government.

This concludes my remarks, and I request that my full remarks be submitted into the record. With that I would like to conclude by saying that America's 3,066 counties, 19,000 cities and towns, 14,350 local school districts, and their elected and appointed officials, urge you to continue the long-standing and wise Congressional restraint against interference in state and local government employer-employee relations, and not enact this legislation. . Thank you and I am happy to answer any questions you may have.