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H.R. 413, PUBLIC SAFETY EMPLOYER–EMPLOYEE COOPERATION ACT OF 2009

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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H.R. 413, PUBLIC SAFETY EMPLOYER–EMPLOYEE COOPERATION ACT OF 2009

Wednesday, March 10, 2010
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 10:35 a.m., in room 2175, Rayburn House Office Building, Hon. Robert Andrews [chairman of the subcommittee] presiding.

Present: Representatives Andrews, Hare, Tierney, Fudge, Kildee, McCarthy, Sestak, Clarke, Price, Kline, and Roe.

Staff present: Tylease Alli, Hearing Clerk; Andra Belknap, Press Assistant; Jody Calemine, General Counsel; Carlos Fenwick, Policy Advisor,; David Hartzler, Systems Administrator; Gordon Lafer, Senior Labor Policy Advisor; Sadie Marshall, Chief Clerk; Megan O'Reilly, Labor Counsel; James Schroll, Junior Legislative Associate, Labor; Michele Varnhagen, Labor Policy Director; Kirk Boyle, Minority General Counsel; Casey Buboltz, Minority Coalitions and Member Services Coordinator; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Senior Legislative Assistant; Alexa Marrero, Minority Communications Director; Ryan Murphy, Minority Press Secretary; Jim Paretti, Minority Workforce Policy Counsel; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Minority Professional Staff Member.

Mr. KILDEE [presiding]. A quorum being present, the subcommittee will come to order.

I apologize. Teachers are usually right on time, but we had three hearings this morning, and I am a little out of wind—not as much as you—some of you guys do as you do your duties, but it is good to be here with my good friend Tom, and we will go for opening statements at this time.

First of all, I would like to thank all the witnesses today, and for your patience, for joining us to look at H.R. 413, the Public Safety Employer-Employee Cooperation Act, which would enable public safety employees to discuss important work and safety issues with their employers.

This legislation would extend to firefighters, police officers, correction officers and other public safety officers the basic right to

collectively bargain with their employers. H.R. 413 is identical to legislation which passed the House in the 110th Congress.

In 2007 that legislation passed this committee by a nearly unanimous vote of 41-1 and passed the House as a suspension bill with a vote of 314-97.

We should not forget that firefighters and police men and women risk their lives every day to protect the public. Yet there are some states in this country that deny them the basic right to discuss workplace issues with their employers, a right many other Americans have.

At the very least, they should be allowed to negotiate for wages, hours and safe working conditions. When I was in the state legislature in Michigan, I helped pass legislation that grants all public employees the right to collectively bargain, including policemen, firefighters and public safety officers.

As a matter of fact, the chief sponsor of that bill—I was co-sponsor of that bill—just has been named the chair of the Ways and Means Committee of the U.S. House of Representatives, Sander Levin. He is still being elevated.

In Michigan, this bill has led to a working environment that effectively protects the public and that both employers and employees can be proud of. Cooperation between public and safety employers and employees reduces fatalities, improves public safety services, and saves the taxpayers money.

And that has been the experience in Michigan now for—since 1965, when we passed that. Very good record of experience.

While I feel that Michigan is an excellent example of how employer and employee cooperation can benefit everyone, I do not want to impose that same structure on all states. I recognize that states may have different approaches that would be more effective for that particular state.

H.R. 413 would merely create a minimum standard that states have the flexibility to implement, regulate and enforce as they see fit. Many states, such as Michigan, have laws in place that go well beyond 413, and these states would not be affected by this legislation.

Additionally, this legislation does not allow strikes or lockouts, and it reserves management rights. Firefighters and police officers are very serious about their commitment to public safety. They deserve the basic right to sit down with their employers and discuss their work conditions.

The reasonableness of this legislation is demonstrated by the wide bipartisan support it has from its nearly 200 co-sponsors. I urge my colleagues to join me in supporting this important legislation.

I now recognize the senior Republican member and my friend, Mr. Price, for an opening statement.

[The statement of Mr. Kildee follows:]

Prepared Statement of Hon. Dale E. Kildee, Vice Chairman, Committee on Education and Labor

I would like to thank all the witnesses for joining us today to look at H.R. 413, the Public Safety Employer-Employee Cooperation Act, which would enable public safety employees to discuss important work and safety issues with their employers.

This legislation would extend to firefighters, police officers, corrections officers and other public safety officers the basic right to collectively bargain with their employers.

H.R. 413 is identical to legislation which passed the House in the 110th Congress. In 2007, that legislation passed this committee by a nearly unanimous vote of 41 to 1 and passed the house as a suspension bill with a vote of 314 to 97.

We should not forget that firefighters and police men and women risk their lives every day to protect the public.

Yet there are some states in this country that deny them the basic right to discuss workplace issues with their employers—a right many other Americans have.

At the very least, they should be allowed to negotiate for wages, hours, and safe working conditions.

When I was in the state legislature in Michigan, I helped pass legislation that grants all public employees the right to collectively bargain.

In Michigan, this has led to a working environment that effectively protects the public and that both employers and employees can be proud of.

Cooperation between public safety employers and employees reduces fatalities, improves public safety services, and saves the taxpayers money.

While I feel that Michigan is an excellent example of how employer and employee cooperation can benefit everyone, I do not want to impose the same structure on all states.

I recognize that states may have different approaches that would be more effective for that state.

H.R. 413 would merely create a minimum standard that states have the flexibility to implement, regulate and enforce as they see fit.

Many states, such as Michigan, have laws in place that go well beyond H.R. 413, and these states would not be affected by this legislation.

Additionally, this legislation does not allow strikes or lockouts and it preserves management rights.

Firefighters and police officers are very serious about their commitment to public safety.

They deserve the basic right to sit down with their employers and discuss their work conditions.

The reasonableness of this legislation is demonstrated by the wide bipartisan support it has from its nearly 200 cosponsors. I urge my colleagues to join me in supporting this important legislation.

Mr. PRICE. Thank you, Mr. Kildee, and I appreciate that, and I—it is a pleasure to join you in the chair today.

I want to begin by thanking the distinguished panel for appearing before us today and apologize for my voice. All of this health care discussion has made me sick, and so I am looking to find a physician who will be able to care for me.

But we do want to thank you for the time that you have taken out of your schedules and your desire to share your expertise and your experience with us, and we thank you.

Firefighters and public safety officers do a tremendous job protecting our communities. They are on the front lines of emergencies, and they represent, as you well know, a key component of the services provided by local governments.

For many folks, firefighters and public safety officers are the most prominent way in which citizens interact with their local governments.

Regarding this issue today, there are, as Mr. Kildee mentioned, good members on both sides of the aisle, Republicans and Democrats, who in good conscience support this bill. There are also good members on both sides, Republicans and Democrats, who, in equally good faith, oppose it.

For many of us, the question today is not whether firefighters or other safety personnel officers should have the right to join a union. That is not the question.

The question is whether or not the federal government should be the one to make that decision and, in so doing, overrule the decisions that have been made by states and local governments over the last 70 years.

At its core, H.R. 413 prescribes what is defined as "minimum standards" for state labor laws and gives Washington the authority and the power to determine whether state laws are valid. It represents a significant intrusion into what many see as purely local matters.

Undoubtedly, some will argue that this measure will have no effect on the majority of states as they already have public sector bargaining laws on their books. And that view is appreciated. And in many cases, it is true. Passage would not change state bargaining laws that meet or exceed the bill's minimum standards.

But what is also true is that each and every one of the 50 states must submit its state labor laws for review by the federal government. Washington will make a decision of whether or not these laws pass muster.

And in imposing such mandates, Congress will expand the scope of a state's obligations, liabilities and costs. And I am particularly interested in the panel's opinion and perspective on the cost that this bill would provide for states that don't currently have this in place.

Put more simply, we are empowering Washington to substitute its judgment for that of reasoned decisions by state legislators, courts and agencies.

Moving ahead in the weeks to come, we all know that this bill will eventually come to the House floor. But I would be remiss if I didn't point out that the timing of this legislation could hardly be worse.

In light of the historic economic downturn, states and municipalities are almost universally faced with staggering budget deficits and an inability to fund and provide for basic needs and services.

To have Washington dictating at this time an additional set of costs on these governments through mandated collective bargaining strikes me as relatively unwise at this moment in time.

Mr. Chairman, I thank you very kindly and I look forward to the testimony of our witnesses today.

[The statement of Mr. Price follows:]

Prepared Statement of Hon. Tom Price, Ranking Republican Member, Subcommittee on Health, Employment, Labor and Pensions

Good morning and thank you, Chairman Andrews. I would like to begin by thanking our distinguished panel for appearing today. We appreciate that they have taken time out of their busy schedules to share their experiences and expertise with us.

Firefighters and public safety officers do a tremendous job protecting our communities. They are on the front lines of emergencies and represent a key component of the services provided by local governments. For many folks, firefighters and public safety officers are the most prominent way in which citizens interact with their local governments.

Now to the matter at hand, there are good Members on both sides of the aisle, Republicans and Democrats, who in good conscience support this bill. And there are both Republicans and Democrats, who in equally good faith oppose it.

For many of us, the question today is not whether firefighters and other safety personnel should have the right to join a union. Rather, the question is whether the federal government should be the one to make that decision, and in so doing, overrule the decisions made by state and local governments over the last 70 years.

At its core, H.R. 413 prescribes "minimum standards" for state labor laws and gives Washington the power to determine whether state laws are valid. It represents a significant intrusion into purely local matters.

Undoubtedly, some will argue that this measure will have no effect on the majority of states as they already have public sector bargaining laws on their books. I appreciate that view, and in many cases, this is true. Passage would not change state bargaining laws that meet or exceed the bill's minimum requirements.

But what is also true is that each and every one of the fifty states must submit its state labor laws for review by the federal government. Washington will make the decision of whether these laws pass muster. And in imposing such mandates, Congress will expand the scope of a state's obligations, liabilities and costs.

Put more simply, we are empowering Washington to substitute its judgment for that of reasoned decisions by state legislatures, courts, and agencies.

Moving ahead in the weeks to come, we all know that this bill will eventually see the House floor. But I would be remiss if I did not point out that the timing of this legislation could hardly be worse. In light of the historic economic downturn, states and municipalities are almost universally facing staggering budget deficits and an inability to fund and provide for basic needs. To have Washington dictate an additional set of costs on these governments, through mandated collective bargaining, strikes me as unwise at this moment.

Thank you, Chairman and I look forward to hearing from our witnesses.

Mr. KILDEE. Thank you, Mr. Price.

I would like now to introduce our panel of witnesses for this hearing. Mr. Chuck Canterbury is the national president of the Fraternal Order of Police and has been reelected three times since first assuming the role in 2003.

He began working as a police officer in 1978 and retired in January 2004 after an extensive 25-year career. President George Bush appointed Mr. Canterbury to the Medal of Valor Board and he serves on our nation's Homeland Security Council.

Thank you for that.

Our next witness is Mr. David Smith, the mayor of Lancaster, Ohio. He was elected mayor of Lancaster in November of 2003 and is currently in his second term. Prior to his election as mayor, Mr. Smith served the Fourth Ward of the Lancaster City Council from 2002 to 2003 and was a member of the Lancaster City School Board from 1995 to 2001.

Mr. Marshall Thielen I met before, during and after this legislation the last time it passed—is the president of the Fairfax County Police, which represents over 1,300 police officers of the Fairfax County Police Department.

He is also the original vice president of the International Union of Police Associations for Virginia, Maryland, D.C., West Virginia and North Carolina. Mr. Thielen has been a Fairfax County, Virginia police officer for 17 years.

And I have a second home in that area now for 34 years and have always appreciated the fine police work out there in McLean, Virginia.

Mr. Douglas Steele is a partner in the law firm of Woodley & McGillivary in Washington, D.C. For more than 20 years Mr. Steele has represented unions and employees, with an emphasis on public safety employees, at the federal, state and local level throughout the United States.

Ellis Hankins, executive director, North Carolina League of Municipalities, Raleigh, North Carolina—Mr. Hankins is the executive director of the North Carolina League of Municipalities and has held that position since 1997.

He was born and raised in North Carolina and educated at UNC-Chapel Hill, undergraduate, graduate school and law school. Prior to joining NCLM, Mr. Hankins practiced law in the private sector in North Carolina.

Mr. Stafford is the vice president of the National Right to Work Committee. Mr. Stafford has been with the National Right to Work since 1997 and heads their legislation and communications department.

Jim Tate is the president of Fort Worth Professional Firefighters Association, International Association of Firefighters, Local 440, a position he has held for 14 years.

Mr. Tate served the community of Fort Worth for 25 years as a firefighter in the Fort Worth fire department and has held the rank of battalion chief for the last 11 years. He has also served for 5 years on the National Fire Protection Association's committee on bunker gear.

Before we begin, let me kind of explain briefly our lighting system. You all see lights near you there. The light is green when you begin to speak. When you see the light turn yellow, it means you have about 1 minute remaining. When the light turns red, your time has expired and you need to conclude your testimony.

Please be certain as you testify to turn on and speak into the microphones in front of you. And don't worry, there is no ejection seat. If you have something to conclude with, I am not going to bang the gavel down, but try to stay within the time there.

Call upon our first witness now, Mr. Chuck Canterbury.

STATEMENT OF CHUCK CANTERBURY, NATIONAL PRESIDENT, GRAND LODGE, FRATERNAL ORDER OF POLICE

Mr. CANTERBURY. Good morning, Mr. Chairman, Ranking Member Price and the distinguished members of this subcommittee. My name is Chuck Canterbury, national president of the Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing over 327,000 officers.

I am here this morning to urge this subcommittee to pass H.R. 413, the Public Employer-Employee Cooperation Act. The legislation which is co-sponsored by nearly 200 members of the House, was considered and overwhelmingly passed by the last Congress. Its enactment is one of the highest legislative priorities of my organization.

It is a very simple bill, crafted to accomplish a very simple objective: to give our nation's public safety officers who put themselves in harm's way every day the opportunity to sit down and talk with their employers about workplace issues. It is about the importance of dialogue between the rank and file public safety officers and the agencies that employ them.

This bill would recognize the fundamental right of public safety employees, primarily law enforcement officers and firefighters, to form and join unions and bargain collectively with their employers over wages, hours and working conditions without undermining existing state labor laws.

The FOP believes that the federal government has a legitimate and even vital interest in public safety, even at the local and state level, because all of these officers are an integral part of our na-

tional security and our ongoing efforts to protect the United States from domestic and foreign terrorists.

Congress routinely sets minimum expectations and requirements that must be met by state and local governments to achieve a federal objective.

I would also remind those who would conjure up the bogeyman of collective bargaining having an adverse effect on public safety that every single police officer in Pennsylvania, New York and Washington—police and fire—who responded to the terrorist attacks on September 11th were covered by collective bargaining agreements.

Just recently, the two Pentagon police officers that prevented disaster by subduing the shooter at the Pentagon are members of an FOP labor union.

None of those called to action in these most extreme of circumstances paused to contemplate whether any of their actions would impact current or future negotiations. Collective bargaining is a critical tool to resolve differences, not create them.

The bottom line is not a shareholder profit versus wages, but how to best keep the public safe and to get the officers safely home at the end of their shifts. The success of the law enforcement mission depends on an open dialogue that is absent in far too many of our departments today.

When the bill requires an impasse resolution mechanism, I do not expect the impasses will be common but, rather, they will be rare. It has been my experience that labor and management can resolve their issues if they have a means to discuss them.

Imagine for a moment how difficult it would be for Congress to conduct business if there was no way for the leadership and the party members to caucus and plan their parties' agenda, or if there was no dialogue between the majority and minority members. If this were the case, bipartisan agreement would be even less possible. There would be no way for Congress to function.

H.R. 413 would require the right of employees to form and join a union, the requirement that public safety employers recognize the union and agree to bargain over hours, wages and terms and conditions of employment, and the availability of an impasse resolution mechanism such as fact-finding or mediation. These are minimal requirements at the heart of this legislation, and none can be fairly called burdensome.

I want to emphasize very strongly that this legislation is construed in such a way—it is, excuse me, constructed in such a way that it preserves and protects the authority of the state to maintain and administer its own collective bargaining laws. The legislation presumes that states are in compliance unless the FLRA deems—finds otherwise.

I would also like to note that the legislation protects state right-to-work laws and would allow states to enforce laws that prevent employers and unions from requiring union fees as a condition of employment.

I know that the National Right to Work Committee is an influential and well-funded organization. But having read their criticism of this legislation, I have to tell you that they are far off the mark. Forced unionization and helping union bosses corral more members

goes beyond political hyperbole. It is irresponsible, offensive, and it is just wrong.

Mr. Chairman, this bill takes a minimalist approach to a critically important issue. It is well crafted, balanced and respectful of the principles of federalism. I urge this committee to pass this bill on to the full committee and subsequently to the floor, and let's get it to the Senate.

Thank you, Mr. Chairman.

[The statement of Mr. Canterbury follows:]

Prepared Statement of Chuck Canterbury, National President, Grand Lodge, Fraternal Order of Police

Good morning, Mr. Chairman, Ranking Member Price, and distinguished members of the House Subcommittee on Health, Employment Labor and Pensions. My name is Chuck Canterbury, the National President of the Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing more than 327,000 officers in every region of the nation.

I am here this morning to urge this Subcommittee to consider and report favorably H.R. 413, the "Public Employer-Employee Cooperation Act." The legislation, which is cosponsored by nearly two hundred Members of the House of Representatives, was considered and overwhelmingly passed by the full Committee in June 2007 on a 42-1 vote and, just a few weeks later passed the House on a 314-97 vote. Its enactment is one of the highest legislative priorities of our the Fraternal Order of Police.

This is a very simple bill, crafted to accomplish a very simple objective—to give our nation's public safety officers, who put themselves in harm's way every single day, the opportunity to sit down and talk with their employers about workplace issues. It's about the importance of dialogue between the rank-and-file law enforcement officers and the public safety agency which employs them.

The bill, which was introduced by Representatives Dale Kildee (D-MI) and John J. Duncan, Jr. (R-TN), would recognize the fundamental right of public safety employees—primarily law enforcement officers and firefighters—to form and join unions and bargain collectively with their employers over wages, hours, and working conditions without undermining existing State collective bargaining laws.

The FOP believes that the Federal government has a legitimate, even vital, interest in public safety, even at the local and State level because all of these officers are integral to our national security and our ongoing efforts to protect the United States from domestic and foreign terrorists.

Indeed, Congress routinely sets minimum expectations and requirements that must be met by State and local governments. In 1995, for example, Congress passed the Congressional Accountability Act, which for the first time recognized the right of Congressional employees to organize. The aim of that law was to ensure that "all laws that apply to the rest of the country also apply equally to the Congress." As a result, the U.S. Capitol Police were able to form a union and for the first time, had a voice in matters related to their livelihood. Their very first contract established the Joint Labor-Management Relations Committee to review police practices and procedures, another to review equipment issues and officers safety. An examination of the issues reviewed by the joint committee demonstrates that the overwhelming majority of them relate directly to job performance. Since winning the right to bargain collectively, the U.S. Capitol Police have increased the acquisition and distribution of soft body armor and upgraded their sidearms to .40 caliber. The views of the rank-and-file officers, brought to the Joint Committee by the FOP union, have resulted in more efficient manning of fixed posts throughout the U.S. Capitol complex, making it a safer place to work and visit.

Collective bargaining is a critical tool to resolve differences, not create them. The success of the law enforcement mission depends on a open dialogue that is absent in far too may of our departments today. While the bill requires an impasse resolution mechanism, I do not expect that impasses will be common, but rather that they will be rare. It has been my experience that labor and management can resolve their issues if they have a means to discuss them. At the end of the day, the goals of the employer and the employee are the same: improving the safety of the public and of the officer.

I also want to emphasize that this legislation is constructed in such a way that it preserves and protects the authority of the State to maintain and administer its own collective bargaining law. The legislation merely establishes very basic collec-

tive bargaining principles which State laws must meet. The implementation and enforcement of those laws are left entirely to the States.

In fact, the legislation has numerous built-in safeguards to protect existing State laws by including provisions which:

• presume that State laws are in compliance unless the Federal Labor Relations Authority (FLRA) affirmatively finds that they are not;

• limit the FLRA to evaluating State laws solely on the basis of the minimums provided for in this bill and prohibiting the creation of new requirements to be imposed on States; and

• require the FLRA to give "maximum weight" to an agreement between management and a labor organization that the State law complies with this legislation when reviewing existing State law.

In addition, the legislation protects State right-to-work laws. Specifically, the bill allows States to enforce laws that prevent employers and unions from requiring union fees as a condition of employment. Many people assume that collective bargaining rights and right-to-work laws are mutually exclusive, but the fact is that the two can coexist. Many right-to-work States allow collective bargaining and all private sector employees in such States have bargaining rights. Public safety officers in these States deserve the same rights as other workers.

I think it is important to underscore the unique nature of public safety work. Ours is not the traditional labor-management relationship. In our line of work, the aim of both the rank-and-file officer and the chief law enforcement officer is to decrease crime and make communities safer. This is our bottom line: not profits versus wages, but the safety of the public and of the officer. Studies have consistently shown that cooperation between public safety employers and employees enhances overall public safety, as well as the safety of officers.

Imagine for a moment how difficult it would be for Congress to conduct business if there was no way for the leadership and the party members to caucus and plan the party's agenda. Or if there was no dialogue between the majority and the minority members. If this were the case, bipartisan agreement would be even less possible—there would be no way for Congress to work in a bipartisan manner and the nation would suffer as a result.

This legislation affords the opportunity for public safety employees to form and join a union, giving the rank-and-file officer a voice in the workplace. It will provide management with needed feedback. We know that crime-fighting is successful and effective if conducted by a team working together with an open dialogue.

If the legislation becomes law with the language that has been prepared for the Committee's consideration, then the FLRA, bound by the provisions described above, would then review existing State law and determine if the law would "substantially provide" for the following rights and responsibilities:

• the right to form and join a labor organization that serves as, or seeks to serve as, the exclusive bargaining representative for non-management and non-supervisory public safety employees;

• a requirement that the public safety employer recognize the employees' labor organization, agree to bargaining;

• the right to bargain over hours, wages, and the terms and conditions of employment;

• the availability of an "interest impasse resolution mechanism such as fact-finding, mediation, arbitration, or comparable procedures"; and

• a requirement of enforcement through State courts of "all rights, responsibilities, and protections provided by State law," including any written contract or memorandum of understanding.

These very minimal requirements are the heart of this legislation, and none can be fairly called burdensome. More importantly, it is only if the FLRA determines that a State does not "substantially provide" for the these rights and responsibilities that the Authority will issue regulations.

Neither this bill or any regulations issued by the FLRA under the authority of this legislation will invalidate a certification, recognition, collective bargaining agreement, or memorandum of understanding which has been issued, approved, or ratified by any public employee relations board or commission or by any State or political subdivision or its agents (management officials) that is in effect on the day before the date of enactment, or the results of any election held before the date of enactment.

The bill would not preempt any law of any State or political subdivision of any State or jurisdiction that substantially provides greater or comparable rights and responsibilities as described in above, or prevent a State from enforcing a State law which prohibits employers and labor organizations from negotiating provisions in a

labor agreement that require union membership or payment of union fees as a condition of employment (i.e. "right-to-work").

The bill would also not preempt any State law in effect on the date of enactment that substantially provides for the rights and responsibilities described above solely because:

• such State law permits an employee to appear in his or her own behalf with respect to his or her employment relations with the public safety agency involved;

• such State law excludes from its coverage employees of a state militia or national guard;

• such State law does not require bargaining with respect to pension and retirement benefits;

• such rights and responsibilities have not been extended to other categories of employees covered by this legislation, in which case the FLRA shall only exercise the authority granted it by this bill with respect to those categories of employees who have not been afforded the aforementioned rights and responsibilities;

• such laws or ordinances provide that a contract or memorandum of understanding between a public safety employer and a labor organization must be presented to a legislative body as part of the process for approving such contract or memorandum of understanding.

Further, if a State provides collective bargaining rights for some, but not all, public safety employees described in the bill, the FLRA will be required to specify those categories of employees to eliminate any confusion over which groups of employees would come under the FLRA regulations.

Finally, a State may exempt from its State law, or from the requirements established by this bill, a political subdivision of the State that has a population of less than 5,000 or that employs fewer than 25 full time employees.

In conclusion, Mr. Chairman, this bill takes a minimalist approach to a critically important issue. The bill is well-crafted, balanced, and respectful of the principles of Federalism.

I want to thank you for holding this hearing and to thank all Members of this Subcommittee for their time and attention to this important issue.

Thank you. I would now be happy to answer any questions you may have.

Mr. KILDEE. Thank you very much.

The Honorable David Smith?

STATEMENT OF HON. DAVID SMITH, MAYOR, LANCASTER, OH

Mr. SMITH. Thank you. Chairman Kildee, Ranking Member Price, distinguished members of the House Education and Labor Committee, thank you for this opportunity to be—appear before your committee. My name is David Smith, and I am the mayor of Lancaster, Ohio.

I come before you this morning to present my views on successful collective bargaining between the city of Lancaster, Ohio, and the International Association of Firefighters and the Fraternal Order of Police. This administration has been able to work through the bargaining process to the mutual benefit of the citizens of Lancaster and our public safety employees.

The process has been one of openness, mutual respect and consideration for the other side's limitations and concerns. The process is only as complicated as the two groups decide to make it. By keeping the goal of fairness and cooperation in sight, we have been able to come to agreements.

My job as mayor focuses on managing the budget, delivering services and serving the citizens. Part of that service is guaranteeing that effective safety forces are ready to meet the city's needs. Therefore, a considerable amount of time is spent talking to, negotiating with and settling issues with our employees.

After my election in November of 2003, I was greeted by a deficit budget of almost $1.5 million out of a general fund budget of $25

million. Two expiring union contracts needed to be resolved before the end of my first year in office with AFSCME and Local 291 IAFF. And those would be followed the next year with contracts with our other two unions, police and com techs.

Once I had my feet on the ground in my position as mayor, we had our first meeting with—for contract negotiations with the Local 291. We had some preliminary meetings to get acquainted with the players on both sides and to establish some ground rules.

During the negotiation we freely exchanged ideas and matter of factly worked out the details of new health insurance participation rates, minimum staffing as well as general contract language and the all-important wages and benefits.

Both sides worked with outside legal counsel and had the contract done in timely fashion. It was ratified by the union and by the city council by the end of the year. It was a good package for the firefighters, the administration and the residents and businesses of the city.

The next year we took the same approach with FOP, officers and supervisors. Again, we established the basic ground rules, looked at the priorities of both sides, limited the number of issues to be resolved in this contract, discussed the issues openly, and over a period of several meetings came away with a contract that the union and that city council understood and could support.

We have worked together for a second 3-year contract with both FOP and IAFF. We are about to begin later this summer the third contract with IAFF.

The U.S. Congress has been talking about health care, and the city of Lancaster has had its own meetings with our bargaining units. We talk about affordable benefits, co-pays, participation rates, how to open up competitive bidding by the health care providers and how the cost of health insurance affects the ability of the city to pay better wages.

One of the keys was an understanding that increased participation rates from a small dollar amount would rise to 10 percent, 12 percent, 14 percent of the actual cost of insurance over a 3-year period.

Maintaining adequate safety forces and equipping them properly is a challenge in these economic times. The city of Lancaster has a 2010 general fund budget that is less than the 2009 budget, which is less than the 2008 budget, which was less than the 2007 budget.

We have prioritized safety forces and have sacrificed street paving, and we have been unable to afford the necessary maintenance of our public buildings. We have dealt with the heavy burden of unfunded mandates by the EPA on our local water and wastewater plants.

The state of Ohio has a budgetary problem itself, and it would appear that the state will be reducing its support to local governments. All of this impacts the money that we will have to pay our safety forces. The city of Lancaster is not unique in its concern for the future.

I wish to tell those not familiar with collective bargaining that our success has been built on common sense and respect. Both

sides need to share goals, appreciate the financial status of government and be relatively open to the other's thoughts and ideas.

In my experience, it isn't that difficult to work out the differences. After all, these safety forces personnel protect our lives and property every day and they want to continue to do so.

Again, I thank you for listening to my comments. I hope that my testimony has shown that collective bargaining is not something that should be feared by those not familiar with it.

Collective bargaining is working in Lancaster, Ohio. It reflects the cooperation and dedication that the administration and the safety forces know is necessary to serve the city. Thank you.

[The statement of Mr. Smith follows:]

Prepared Statement of Hon. David S. Smith, Mayor, Lancaster, OH

CHAIRMAN ANDREWS, RANKING MEMBER PRICE, DISTINGUISHED MEMBERS OF THE HOUSE EDUCATION AND LABOR COMMITTEE: Thank you for this opportunity to appear before your committee. My name is David Smith and I am the mayor of Lancaster, Ohio.

I come before you this morning to present my views on successful collective bargaining between the city of Lancaster, Ohio and the International Association of Fire Fighters (IAFF) and the Fraternal Order of Police (FOP). This administration has been able to work through the bargaining process to the mutual benefit of the citizens of Lancaster and our public safety employees. The process has been one of openness, mutual respect and consideration for the other side's limitations and concerns. The process is only as complicated as the two groups decide to make it. By keeping the goal of fairness and cooperation in sight, we have been able to come to agreements.

My previous positions in marketing and sales for glass manufacturers did not prepare me for the collective bargaining process. Although I had served on the local school board during negotiations with the Lancaster Education Association as they represented the teachers, I did not have extensive training in negotiations or labor relations. My job as mayor focuses on managing the budget, delivering services, and serving the citizens. Part of that service is guaranteeing that effective safety forces are ready to meet the city's needs. Therefore, a considerable amount of time is spent talking to, negotiating with and settling issues with our city employees.

After my election in November of 2003, I was greeted by a deficit budget for 2004 of almost $1,500,000 out of a general fund budget of about $25,000,000. Two expiring union contracts needed to be resolved before the end of my first year in office with AFSCME and Local 291, IAFF. And those would be followed the next year with contracts with our other two unions—Police and Com-Techs (both FOP).

Once I had my feet on the ground in my position as mayor, we had our first meeting for contract negotiations with Local 291 (of the IAFF). We had some preliminary meetings to get acquainted with the players on both sides and to establish some ground rules. During the negotiation, we freely exchanged ideas and matter-of-factly worked out the details of new health insurance participation rates, minimum staffing as well as general contract language and the all important wages and benefits. Both sides worked without outside legal counsel and had the contract done in a timely fashion. It was ratified by the union and by city council by the end of the year. It was a good package for the Firefighters, the Administration and the residents and businesses of the City.

The next year we took the same approach with the FOP—Officers and Supervisors. Again, we established the basic ground rules, looked at the priorities of both sides, limited the number of issues to be resolved in this contract, discussed the issues openly and over a period of several meetings came away with a contract that the union and that City Council understood and could support. We have worked together for a second 3-year contract with both FOP and IAFF. We are about to begin later this summer the third contract with IAFF.

The US Congress has been talking about health care and the City of Lancaster had its own meetings with our bargaining units. We talked about affordable benefits, co-pays, participation rates, how to open up competitive bidding by the healthcare providers, and how the cost of health insurance affects the ability of the city to pay better wages. One of the key outcomes was an understanding that increased participation rates going from a small dollar amount to 10%, 12% and 14% of the actual cost of the insurance over a 3-year period.

In all cases, we often had to revisit the issues. We have had a number of memorandums of understanding, organizational shuffles to save money and contract openers for the next year. Contract openers occur when both parties have uncertainty about the future and want to wait for better information in the months ahead. The current economic climate has made this approach a necessity in the last two years.

Maintaining adequate safety forces and equipping them properly is a challenge in these economic times. The City of Lancaster has a 2010 general fund Budget that is less than its 2009 budget, which was less than the 2008 Budget and which was less than the 2007 Budget. We have prioritized Safety Forces and have sacrificed street, culvert and bridge maintenance. We have been unable to afford the necessary maintenance of our public buildings. We have dealt with the heavy burden of unfunded mandates by the EPA on our local water and waste water plants. The State of Ohio also has budgetary problems and it would appear that the state will be reducing its support to local governments. All of this impacts the money we have to pay our safety forces. The City of Lancaster is not unique in its concern for the future.

Both sides have sacrificed significantly during these hard economic times. We have already cut back on general spending to maintain safety forces but decreased revenues from all sources ultimately means layoffs in the departments we need most, Police and Fire. We are already at lower than suggested personnel levels in both the Police and Fire departments for a community our size. We have re-organized both departments as supervisors retired and we replaced those positions with lower paying ones. The bargaining units are aware of the economic climate and have helped by spreading their vacations over the whole year versus the prime summer months to reduce the need for overtime. They have accepted the elimination of the supervisory positions and have taken 0% salary increases in order to avoid layoffs in the departments.

I wish to tell those not familiar with collective bargaining that our success has been built on common sense and respect. Both sides need to share goals, appreciate the financial status of government, and be relatively open to the other's thoughts and ideas. In my experience, it isn't that difficult to work out the differences. After all, these safety forces personnel protect our lives and property everyday and they want to continue to do so.

Again, I thank you for listening to my comments. I hope that my testimony has shown you that collective bargaining is not something that should be feared by those not familiar with it. Collective bargaining is working in Lancaster, Ohio. It reflects the cooperation and dedication that the administration and the safety forces know is necessary to serve the city.

Mr. KILDEE. Thank you very much, Mayor.

Mr. Thielen?

STATEMENT OF MARSHALL THIELEN, PRESIDENT OF THE FAIRFAX COALITION OF POLICE, AND VICE PRESIDENT OF REGION 10 INTERNATIONAL UNION OF POLICE ASSOCIATIONS

Mr. THIELEN. Hi. I am Marshall Thielen. I am a Fairfax County police officer. I represent the Fairfax County police officers, which is 1,400 police officers. I am elected by my peers, and I do not consider myself to be a big union boss.

I also am a regional vice president for the International Union of Police Associations which represents over 100,000 law enforcement officers throughout the nation.

H.R. 413, as you know, provides basic collective bargaining rights for first responders. According to the Bureau of Labor Statistics, 300,000 law enforcement and 130,000 firefighters live in states that restrict or outlaw their ability to have a voice in the job on matters of pay, benefits and working conditions.

This bill will eliminate the need for litigation in many cases. When we have a seat at the table, the need for litigation is lessened.

For instance, in 2005 my organization was denied the ability to voice concerns to our elected leaders about violations of the Fair Labor Standards Act. Because of this, we had to engage in costly litigation in federal court.

While we prevailed, unfortunately the county government had to expend thousands of unnecessary dollars in defending a lawsuit, all because we are denied the right to speak to them and to resolve a situation outside of court.

In 2009 the elected officials in Fairfax County voted to not fund any employee compensation enhancements. This was done for political reasons and in conflict with county law. Again, we are not consulted prior to this happening, nor were we heard when we brought the conflict to their attention.

Again, we have no mechanism outside of costly litigation to resolve this matter. So back to court we go at the cost to our members and the citizens that we serve.

Dialogue and mediation are always better than litigation. We need that dialogue so that we can work with our local governments in managing these bad budget years.

I am a native of Vermont. In Vermont public safety has collective bargaining. Very recently, the Vermont troopers, through the collective bargaining process, negotiated a pay cut to all troopers in order to avoid layoffs that would have cut vital law enforcement services to the citizens of Vermont. This is a prime example of the value of the collective bargaining process.

You will hear arguments about how collective bargaining will hinder management's ability to provide for the public safety and will in some way bankrupt localities. This assertion is absurd on its face.

The opponents of this bill will not want to face the fact that every 9/11 first responder at Ground Zero was a card-carrying union member with collective bargaining rights. This fact in no way hindered their response nor their commitment to saving lives and giving the ultimate sacrifice.

Most states in the nation allow some form of collective bargaining and they still have found, as with the Vermont example and countless others, that rank and file first responders will answer the call and work with management during good times and bad to provide for the best possible service to the citizens of this great nation.

Any claims to the contrary is a slap in the face to this nation's first responders who, day after day, don their uniforms and equipment and, at great peril, serve the citizens of their localities.

Some opponents to this bill may throw about the notion of public safety strikes as a scare tactic. Every member of this committee knows that striking is explicitly outlawed in this bill and is the first national law that, if passed, addresses the issue. We would oppose any thought of public safety strikes and are glad that this matter is finally addressed.

First responders deserve the same rights as the citizens that we serve. Labor and management can and should work together in order to provide for the best possible public safety services to our citizens. This bill allows us to do just that.

This bill does not eliminate the right-to-work laws of this nation. Any assertion that it does is simply not true. In 15 of 23 right-to-work states, some form of enforceable collective bargaining is allowed and does exist. H.R. 413 is compatible with the right-to-work tenets. Nowhere in this bill is there any compulsory union membership.

It gives me pause to wonder why any manager would not choose to have a dialogue with those that are on the front lines of their policies and procedures when they know at the end of the dialogue they are still in charge and that this exchange of ideas will not dilute their authority but can sharpen their perception and improve their image and enhance their understanding of the people that they command.

As professional public safety officers, we should not have to be subjected to collective begging while the majority of the nation has collective bargaining in the workplace. Your nation's first responders deserve better than that.

I thank you for your time and am humbled to speak before you about a matter so critical to our nation's first responders. On behalf of the International Union of Police Associations, I thank you for your consideration on this critical bill.

[The statement of Mr. Thielen follows:]

Prepared Statement of Marshall Thielen, President, Fairfax Coalition of Police; Vice President, International Union of Police Associations

I am Marshall Thielen, a police officer employed by the Fairfax County Police Department (Virginia). I have been a Police Officer for 17 years and I speak to you today as the President of the Fairfax Coalition of Police, and the Region 10 Vice President for the International Union of Police Associations (IUPA). I bring the perspective of working in one of only two states in the country that outlaws collective bargaining for all public safety personnel.

The "Public Safety Employer-Employee Cooperation Act of 2009" (H.R. 413) provides collective bargaining rights for law enforcement officers, firefighters and emergency medical personnel across this nation. In some states like Virginia and North Carolina collective bargaining is actually outlawed. In others, it is a matter of local referendum. According to the Bureau of Labor Statistics, approximately 300,000 police officers and 130,000 fire fighters live in states where their government denies them the fundamental right to a voice on the job. This bill will provide all law enforcement officers and firefighters with the basic bargaining rights they have been seeking for generations.

The I.U.P.A. is proud to have been a vigorous supporter of this bill since its inception over a decade ago. The I.U.P.A. has also worked with other national police and fire groups in a unified coalition to coordinate support for the Bill.

We have long believed and advocated that the public's safety is better served when those employees who are on the front line providing public safety, have their voices heard in determining procedures and protocols surrounding that service. We also note that the most effective leaders are those who not only listen to the voices of subordinates, but seek out their opinions and experiences in carrying out the mission of their organizations.

We will hear from those who oppose this legislation from the right to work groups, cities and counties, the Sheriffs and the Chiefs of Police. Their mantra will be both "states rights" and that this nation cannot afford to weaken our public safety and homeland security by allowing police unions to dilute the authority of their leadership. However, the vast majority of public safety officers currently have the rights that are provided by H.R. 413, and it is irresponsible to assert that the safety of citizens protected by these officers is somehow weakened.

While the entire nation honored the sacrifices of public safety officers who served on 9/11, the opponents of H.R. 413 will not say, nor even acknowledge, that every one of the 60 police who died in 9/11, and every one of the 343 firefighters and paramedics who died in 9/11 were members of unions and had collective bargaining rights. Their union membership did not interfere with their commitment to their responsibilities. Nor did union membership interfere with the city's 37,000 police or

15,000 firefighters and paramedics who either were on alert or responded during the two critical weeks after 9/11. The real issues for the chiefs and employers are money and control.

We believe that both concerns are baseless. There is no binding arbitration provision in the bill; employers are not mandated to agree to any collective bargaining agreement that they cannot afford nor with which they disagree. Chiefs and sheriffs are not required to agree to any settlement that impairs their ability to exercise the control their position requires. The reality then is that this bill mandates that the leaders of the departments converse with the elected representatives of the brave men and women who provide for the public's safety.

Labor-management partnerships benefit communities. Labor-management partnerships, which are built on collective bargaining relationships, make police and fire departments more effective by enabling rank-and-file workers to provide input into the most efficient methods to provide services. Studies show that communities that promote such cooperation not only suffer fewer fatalities of public safety employees, but also enjoy more efficient delivery of emergency services.[i]

Labor-management partnerships have also benefited both labor and management in these difficult fiscal times. Public safety unions understand that state and local governments are under great fiscal pressure, and unions can assist the governments manage these pressures by providing the views of the front line officers on the most effective methods to reduce costs and by explaining to the officers the need for the cuts. For example, public safety unions representing both the Vermont State Troopers and the Springfield Ohio police officers recently agreed to pay reductions.[ii] As the Mayor of Springfield, Tim Davlin, stated, "I'm pleased that our working relationship with the Police Benevolent and Protective Association has resulted in our ability to avoid layoffs of police officers."

Labor-management partnerships contribute to homeland security. Labor-management partnerships play an essential role in efforts to detect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials, and other mass casualty incidents. Public safety unions are often the first to advocate for improving public safety, such as by seeking greater training or the devotion of resources to bullet proof vests.

Public safety employees deserve the same rights as other employees. The vast majority of American workers already have the right to speak out and be heard at work. This right is available to virtually all private sector employees, and to the vast majority of public safety employees. All firefighters, law enforcement officers, and emergency medical personnel deserve the same right to discuss workplace issues with their employer that other employees have.

Most states already meet the standards of H.R. 413. Most states would be completely unaffected by H.R. 413 because they are already provide rights equal to or greater than those provided by H.R. 413. Further, H.R. 413 would leave the implementation and enforcement of these rights to state and local governments. Only where state or local governments do not provide the minimum rights set forth by H.R. 413 would the FLRA have any authority, and even in those situations the FLRA's authority would be limited to ensuring that the minimum rights are extended.

H.R. 413 would give states broad flexibility. The bill would leave almost all the most significant labor issues for states to resolve. H.R. 413 would not undermine existing state bargaining laws, and would provide states with wide latitude to craft bargaining laws that reflect local customs and circumstances. It would be relatively easy for states not currently in compliance to come into compliance, and the implementation and enforcement of state laws would be left to the states.

H.R. 413 would not mandate binding arbitration. The requirements of H.R. 413 could be met instead by fact-finding or mediation.

H.R. 413 would not impose any additional costs on communities. The bill would essentially establish a process without mandating an outcome. HR. 413 would not require that any agreements be reached and would allow local legislative bodies to reject any collectively bargained agreement. Nothing in the bill would require any community to spend a single penny it did not believe to be in the public interest.

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[i] For example, the Secretary of Labor's Task Force on Excellence in State and Local Government, a national bipartisan study group 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 partnerships with effective service results." *http//www.dol.gov/oasam/programs/history/reich/reports/worktogether.toc.htm*

[ii] See Vermont Troopers Union Negotiates Pay Cut, Burlington Free Press, March 5, 20I0; Springfield Police Union Accepts Concessions, Averts Layoffs, State Journal-Register, February 24, 2010.

Government agencies would retain discretion to simply say "no" to any union proposals.

H.R. 413 would potentially decrease the number of lawsuits faced by localities arising from employing public safety officers. When employees and management come to agreement on areas of dispute, the likelihood of lawsuits is decreased.

H.R. 413 would outlaw strikes. The bill would outlaw strikes and work slowdowns by public safety officers as a matter of federal law. The reality is that public safety officers who currently have bargaining rights do not strike, and the overwhelming majority of state laws already prohibit such strikes. Opponents of H.R. 413 point to a series of strikes that occurred 40 years ago, but virtually all of these strikes concerned the right to bargain, and H.R. 413 would make strikes over this issue less likely.

H.R. 413 would not hinder emergency response. The bill would not infringe on the ability of government agencies to manage public safety operations however they see fit. Every one of the 343 firefighters who perished at Ground Zero on September 11, 2001 was a card-carrying union member who enjoyed collective bargaining rights, and most were not even supposed to be on duty that day. The suggestion that these life-saving efforts may have been hindered by the collective bargaining rights of first responders is offensive.

H.R. 413 would not affect right-to-work laws or require that anyone join a union. The bill would have no effect on state right-to-work laws that prohibit contracts that require non-union members to pay agency fees to defray the costs of union representation. In fact, the majority of right-to-work states currently allow collective bargaining for public safety officers. And compulsory unionism is illegal in every state as a matter of constitutional law.

The Public Safety Employer-Employee Cooperation Act is bipartisan. In the 110th Congress, the House passed the bill by a margin of 314 to 97, including 98 Republicans. In the Senate the bill had 37 co-sponsors, including 9 Republicans. The Senate voted to break a filibuster against the bill by a margin of 69-29, including 17 Republicans.

Mr. KILDEE. Thank you.

Mr. Steele?

STATEMENT OF DOUGLAS L. STEELE, PARTNER, WOODLEY & MCGILLIVARY

Mr. STEELE. Thank you, Mr. Chairman.

And good morning, members of the subcommittee. My name is Douglas Steele, and I thank you for this opportunity to speak with you this morning in support of H.R. 413, the Public Safety Employer-Employee Cooperation Act.

I will be speaking with you today concerning the structure of H.R. 413 and how it is intended to operate under a variety of circumstances. My prepared statement also addresses the constitutionality of the bill.

For the past 20 years, it has been my privilege to represent public safety employees as well as other public and private sector employees and their labor organizations throughout the United States.

This has included representation in states where public safety employees have strong bargaining rights and states where they have none. It includes jurisdictions where there is great communication and cooperation between the labor organization and the employer and, again, jurisdictions where there is practically none.

That wealth of experience has helped me to assist in the drafting of H.R. 413 and I believe that it takes a very balanced approach to meeting its goals and that it gives full respect to existing state and local laws as well as to constitutional considerations.

I believe it is that balance and restraint that allowed this bill to garner such a large number of co-sponsors from both sides of the aisle.

Indeed, in the 110th Congress H.R. 980 passed the House by a vote of 314-97, with the support of a majority of the Democrats and a majority of the Republicans. Those distinguished members clearly recognized that the Public Employer-Employee Cooperation Act was not simply a nice thing to do, but the right thing to do and the smart thing to do.

Now, as others have stated, there are certain minimum bargaining rights that are protected by H.R. 413. Those essential rights are, one, the right to form and join a labor organization; two, a requirement that the public employer recognize and bargain with an association that has been freely chosen by a majority of the employees and to commit such agreements to writing; and also to have available some type of impasse resolution mechanism.

The FLRA will be tasked with reviewing existing state laws to determine whether they substantially provide for the rights and responsibilities I have just mentioned. In doing so, the FLRA is to consider and give weight to the opinions of both the public employers and the labor organizations representing the employees.

At this point, one of two things may happen. First, if the FLRA determines that a state or local government already substantially provides the rights set forth in the act, then the role of the FLRA and the federal government comes to an end, and the state and local jurisdictions proceed as they always have.

Second, if the state does not substantially provide for the rights and responsibilities set forth in the act, the FLRA would so notify the state of this deficiency and then the state would chose one of two paths to take.

The first path is that a non-compliant state may choose to pass its own appropriate legislation meeting the act's minimum standards, utilizing the methods and procedures that the state determines is the most appropriate way to do that in their individual states.

The other path that is available is that a non-compliant state could choose simply to do nothing. In that case, the burden of enforcing and administrating the law would fall solely on the federal government acting through the FLRA.

We would anticipate that most states would enact legislation that is compliant, given that the vast majority of public safety officers in the nation are already covered by collective bargaining rights.

It is important to understand, however, that nothing in H.R. 413 requires non-compliant states to pass new legislation or to undertake the enforcement or administration of the act.

I would also like to mention briefly some provisions in the act designed to respect state rights and address some other concerns that have been raised.

Under H.R. 413 it explicitly prohibits public safety employees from engaging in strikes and prohibits their labor organizations from calling for a strike by public safety employees. Presently, no such prohibition exists under federal law.

H.R. 413 protects and preserves any duly established bargaining agreement or memorandum of understanding in effect at the time of enactment. It does not prohibit any state law from requiring a

collective bargaining agreement or memorandum of understanding to be presented to the jurisdiction's legislative body for approval.

In states where the FLRA administers the act, parties would be prohibited from negotiating provisions that would prohibit employees from engaging in part-time employment or volunteer activities.

The act also allows compliant states with the option to exempt small political subdivisions with a population of less than 5,000 or that employ fewer than 25 full-time employees from compliance with the act.

I appreciate the opportunity to appear here before the subcommittee in support of H.R. 413 and would be happy to answer any questions that you may have. Thank you.

[The statement of Mr. Steele follows:]

Prepared Statement of Douglas L. Steele, Partner, Woodley & McGillivary

Good Morning Chairman Andrews, members of the subcommittee, my name is Douglas Steele, and I thank you for the opportunity to speak before the committee this morning in support of H.R. 413, the Public Safety Employer-Employee Cooperation Act. I will be speaking with you today concerning the structure of H.R. 413, and how it is intended to operate under a variety of scenarios. If time permits, I will also address the constitutionality of H.R. 413.

For the past 20 years it has been my privilege to represent public safety employees, as well as other public and private sector employees and their labor organizations throughout the United States. This has included representing public safety employees in States that provide them significant bargaining rights, as well as States that provide them with none; jurisdictions where there is great cooperation and communication between public safety departments and labor organizations, and States where there is open hostility. Of course, as a litigator, I see more of the latter than the former.

That wealth of experience has helped me to assist in the drafting of H.R. 413, as well as earlier versions, over the past 10 years. H.R. 413 takes a very balanced approach to meeting its goals, and gives full respect to existing State and local laws, as well as constitutional considerations. I believe it is that balance and restraint that has allowed this bill to garner such a large number of co-sponsors from both sides of the aisle. Several key provisions in H.R. 413 were drafted by Republican staff members of this Committee, and refinements were made following the 2007 committee hearing at the request of Republican committee staff. Indeed, in the 110th Congress, H.R. 980 passed the House by a vote of 314—97, with the support of the majority of both Republicans and Democrats. Those distinguished Members clearly recognized that the Public Employer-Employee Cooperation Act is not simply a nice thing to do, but the right thing to do; the smart thing to do.

The guiding principles in creating the structure of H.R. 413 were (1) to preserve existing State and local laws that provide bargaining rights that are comparable to or better than the minimum requirements set forth in the Bill; (2) to ensure at least a minimum level of collective bargaining rights and responsibilities where they presently do not exist; and (3) to fully respect the role of the States in Our Federalism.

As others have stated, these minimum rights protected by H.R. 413 are the (1) the right to form and join a labor organization; (2) requiring public safety employers to recognize and bargain with a labor organization freely chosen by a majority of the employees; (3) to commit any agreements reached in to an enforceable written agreement; and (4) to make available an interest impasse resolution mechanism, such as fact-finding or mediation. Procedurally, the Act would operate as follows:

The FLRA is tasked with reviewing existing State laws to determine whether they substantially provide for the rights and responsibilities that I have just mentioned. In doing so the FLRA is to consider and give weight to the opinions of the employers and labor organizations covered by the Act. At this point, one of two things may happen. First, if the FLRA determines that a State or local government already substantially provides the rights set forth in the Act, then the role of the FLRA and the Federal government comes to an end, and such jurisdictions proceed just as they had previously. Second, if a State's laws do not substantially provide for the rights and responsibilities set forth in the Act, the FLRA would notify the State of such deficiency, and then the State chooses one of two paths to follow.

First, a presently non-compliant State may choose to provide such rights to the public safety employees in the State by passing appropriate legislation meeting the

Act's minimum standards, utilizing the methods and procedures that the State determines is the best way to provide these rights to public safety employees in the State. The State could achieve this in a variety of ways, left to the determination of the individual State. This must be accomplished within two years of the enactment of the Act or the end of the first legislative session in such State that begins subsequent to the date of enactment, whichever is later. If a State elects to come into compliance in this way, once again the role of the FLRA and of the Federal Government comes to and end, and the State proceeds to enforce its compliant legislation in the manner it selects.

The other path that a non-compliant State may choose, however, is simply to do nothing, at which point the administration and enforcement obligation falls solely on the Federal government, acting through the FLRA. As an overwhelming majority of public safety employees are already provided these basic rights and responsibilities to public safety employees, one can fairly assume that most non-compliant States will similarly enact their own legislation, and provide these basic rights and responsibilities in an appropriate manner of the State's choosing.

It is important to understand, however, that nothing in H.R. 413 requires non-compliant States to pass new legislation or to undertake the enforcement or administration of the rights and responsibilities provided for in the Act. H.R. 413 simply provides for a basic level of collective bargaining rights and responsibilities for public safety employees, while allowing the States maximum flexibility in achieving these goals.

It is worth noting that H.R. 413 also respects and accommodates the fact that in some States it is the local governmental entities that have enacted ordinances providing for public safety employee bargaining rights, even though there is not a State-wide bargaining law. In these circumstances, if a State chooses not to enact its own compliant legislation—and thus leaves the responsibility for administering the Act to the FLRA—the FLRA is not authorized to enforce or administer the Act with respect to such compliant local jurisdictions. The FLRA's authority would be limited to those areas of the State where public safety employees have not been provided these basic bargaining rights by State or Local government.

There are several other provisions in H.R. 413 that specifically address and preserve the interests of State and local governments, among these are the following:

a) H.R. 413 explicitly prohibits Public Safety Employees from engaging in a strike; and prohibits their labor organizations from calling for a strike by public safety employees. Presently, no such prohibition exists under Federal law;

b) H.R. 413 protects and preserves any duly established bargaining agreement or memorandum of understanding that is in effect at the time of enactment;

c) The Act does not in anyway interfere with or invalidate State right-to-work laws;

d) The Act does not prohibit any State law from requiring a collective bargaining agreement or memorandum of understanding to be presented to the jurisdiction's legislative body for approval;

e) In States where the FLRA administers the Act, the parties are prohibited from negotiating provisions what would prohibit public safety employees from engaging in part time employment or volunteer activities during off-duty hours. In compliant States, where the FLRA does not administer the Act, the issues of part time employment and volunteering are left to the individual States to determine; and

f) H.R. 413 allows compliant States with the option to exempt from coverage political subdivisions with a population of less than 5,000, or that employ fewer than 25 full time employees.

Constitutionality of H.R. 413

The stated authority for H.R. 413 is Congress' authority to regulate commerce pursuant to Article 1, Section 8 of the U.S. Constitution. It is well-established that such authority extends to Federal regulation of the relationship between public employees and their employers, where commerce may be affected. This was established by the U.S. Supreme Court in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), where the Supreme Court held that Congress' authority to regulate commerce includes the authority to apply the wage and hour standards of the Fair Labor Standards Act (hereinafter "FLSA") to State and local governments.

Although detractors have questioned the continuing viability of the Garcia decision, the simple truth is that Garcia remains the law of the land. The Supreme Court has had ample opportunity since Garcia to revisit that decision, but has refused to do so. The Court has not wavered from the fundamental holding in that case that Congress, acting pursuant to the Commerce Clause, may regulate the relationship between public employees—including public safety employees—and their

public employers. Indeed, the Act is in fact less intrusive on principles of federalism than the FLSA because the Act does not dictate wage and hour requirements for public safety employees, but merely establishes the right of such employees to bargain collectively over such terms and conditions of employment.

Moreover, the constitutionality of H.R. 413 is unaffected by the Supreme Court's decisions in New York v. United States, 505 U.S. 144 (1992) and Printz v. United States, 521 U.S. 898 (1997). In the New York case, the Supreme Court invalidated a provision of the Low-Level Radioactive Waste Policy Amendments Act that required States to regulate the disposal of internally generated waste or to take possession of the waste, and assume liability, therefore. In Printz, the Supreme Court invalidated an interim provision of the Brady Act that required local law enforcement officers to conduct background checks of proposed handgun transferees. In both of these cases, the Court applied its now well-established principle that "the Federal Government may not compel States to enact or administer a federal regulatory program."

Significantly, in reaching its conclusions, the Supreme Court contrasted the legislation in New York and Printz with that present in Hodel v. Virginia Surface Mining & Reclamation Ass'n, 452 U.S. 264 (1981). In Hodel, the Supreme Court upheld the constitutionality of Surface Mining Control and Reclamation Act because that Act did not "commandeer" the States into regulating surface mining. Instead, if a State chose not to enact a program that complied with the Federal requirements, "the full regulatory burden will be borne by the Federal Government." Of course, that is precisely the situation with the Public Safety Employer-Employee Cooperation Act.

H.R. 413 does not "commandeer" State government or State officials to enact or administer a federal program. Rather, the Act provides States with the option to enact a State law meeting the minimum requirements of the Federal Act. If a State declines to exercise that option, the responsibility for administering the Act rests with the Federal Government, acting through the FLRA, to implement and administer the program. Thus, as was the case in Hodel, "the full regulatory burden will be borne by the Federal Government." In light of the fact that the Supreme Court reaffirmed its adherence to Hodel in the more recent decisions of New York and Printz, it is clear that the enforcement mechanism provided in the Public Safety Employer-Employee Cooperation Act is fully consistent with controlling law.

Lastly, it should be noted that H.R. 413 does not run afoul of Eleventh Amendment sovereign immunity as interpreted by the Supreme Court's decisions in Seminole Tribe v. Florida, 517 U.S. 44 (1996), Alden v. Maine, 527 U.S. 706 (1999), and Federal Maritime Commission v. South Carolina State Ports Authority, 535 U.S. 743 (2002). These decisions concern a State's sovereign immunity from suit. In Seminole Tribe, the Supreme Court held that individuals cannot sue States in Federal court based upon Federal or State law claims, unless the State has waived its sovereign immunity. Three years later, in Alden, the Court held that, in most circumstances, individuals—as opposed to the Federal Government—cannot sue a State in State court based on a Federal cause of action unless the State has waived its sovereign immunity from suit.

In 2002, in Federal Maritime Commission, the Court held that individuals and private companies may not adjudicate complaints against States in front of federal agencies, as doing so would infringe upon the States' sovereign immunity. Thus, the Court extended its holding in Seminole Tribe and Alden to cases brought by private parties against States in federal administrative agencies.

In response to these decisions, H.R. 413 explicitly provides that in the absence of a State's waiver of its Eleventh Amendment sovereign immunity, the FLRA shall have the exclusive power to enforce the Act in regard to public safety employees employed by a State. Thus, H.R. 413 explicitly avoids any infringement on a State's Eleventh Amendment immunity, as defined by the Supreme Court in Seminole and Alden.

With respect to Seminole and Alden, it is also important to understand the distinction drawn between State and local governments. Both of these decisions are based on State sovereign immunity. In Seminole and Alden, the Supreme Court reaffirmed its previous holdings that such immunity does not extend to local governments or local governmental entities such as cities, towns and counties. More recently, these holdings were affirmed by the Court in Jinks v. Richland County, South Carolina, 538 U.S. 456 (2003) and Northern Insurance Company of New York v. Chatham County, Georgia, 547 U.S. 189 (2006). Thus, these decisions have no impact on the enforcement of the Act against local governments or local governmental entities.

I appreciate this opportunity to appear before this subcommittee in support of H.R. 413, and would be happy to answer any questions that you may have.

Mr. KILDEE. Mr. Hankins?

STATEMENT OF ELLIS HANKINS, EXECUTIVE DIRECTOR, NORTH CAROLINA LEAGUE OF MUNICIPALITIES

Mr. HANKINS. Mr. Kildee, Ranking Member Price and distinguished members, good morning. I am Ellis Hankins, executive director of the North Carolina League of Municipalities. I am also a lawyer and a member of the North Carolina bar.

Thank you for hearing me on behalf of the nation's counties, cities and towns, local school districts, sheriffs, and other elected and appointed officials.

Respectfully, we strongly oppose H.R. 413 and ask that you not fix what is not broken. The act would undermine state and local autonomy, affect all states, even those with collective bargaining, exacerbate the fiscal crisis that states and local governments are experiencing, violate the principles of federalism, and raise significant constitutional questions.

Certainly, many local officials do not oppose collective bargaining, like the Honorable Mayor Smith from Ohio. But we believe these decisions are best made at the state and local level. What works in North Carolina might not work in Ohio, or Michigan, or vice versa.

H.R. 413 violates the principles of federalism and raises significant constitutional questions. The commerce clause is the basis for this enactment. However, the Congressional Research Service questions whether the commerce clause provides sufficient authority.

Its recent report says, "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 cites several recent U.S. Supreme Court decisions.

The bill also has Tenth Amendment implications. Unless states satisfy the mandates, they will be subject to federal takeover. That is a Hobson's choice, perhaps an unconstitutional one.

A North Carolina statute expressly prohibits collective bargaining in state and local government. 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 for Virginia.

Bills to repeal those statutes have been introduced but have not been enacted. This federal mandate is intrusive and at odds with state law in those two states, among others. We believe there are strong arguments that this act is unconstitutional.

We all value the service of our public safety officers. These are dangerous jobs. We honor their service. Elected officials understand that they must provide adequate salaries and benefits, fair employment policies, safe working conditions and good training to all of their employees, and they strive to do that.

However, H.R. 413 would impose excessive unfunded mandates and place serious financial burdens on states and local governments. The fiscal crisis that most states and local governments are experiencing now is another reason to leave alone what is not broken. The additional costs are not fully known, but this would increase the costs of public safety.

The bill would affect more than the 17 states that currently do not have collective bargaining. The decision about whether a state and its local governments are in compliance would rest with the Federal Labor Relations Authority, and I will be pleased to provide more detail and examples later if you are interested.

There is an irony here that I want to point out. This bill applies only to public safety officers. But you know, once that mandate is received in the states and states where other public employees are not allowed collective bargaining, it is going to be difficult for elected officials to not extend the same provisions under the rules of this bill to other employees. It will be hard for them to justify not doing that. That will be an additional cost.

Please know that sheriffs and other law enforcement professionals strongly oppose this bill because they share many of these concerns.

There is another irony. Congress prepares in this bill to force states and local governments to enter into collective bargaining arrangements, to negotiate hours, wages and conditions of employment.

It is unwilling to extend the same scope of rights to its own police officers, Capitol Police and those responsible for public safety in the federal government, the folks who actually are sworn to protect our homeland.

Capitol Police do have limited, very limited, collective bargaining rights, but far from the sweep of this bill.

Let me conclude with the tale of Vallejo, California, a city of about 117,000 people. That city became insolvent and filed a bankruptcy petition because of declining tax revenues and excessive obligations and police and fire collective bargaining agreements.

The bankruptcy panel of the Ninth Circuit held the city was insolvent and authorized modification of collective bargaining agreements.

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.

Thank you. I will be pleased to answer questions.

[The statement of Mr. Hankins follows:]

Prepared Statement of Ellis Hankins,* Executive Director, North Carolina League of Municipalities

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,

*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; and the North Carolina League of Municipalities.

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 involv-

ing 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.

[Additional submissions of Mr. Hankins follow:]

National Governors Association
National Conference of State Legislators
U.S. Conference of Mayors
National Association of Counties
National League of Cities
Council of State Governments
International City County Management Association

June 8, 2009

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Mr. President:

The national organizations representing state and local government officials deeply appreciate your willingness to take actions that preserve and promote the guiding principles that constitute American federalism. Your May 20, 2009, memorandum affirming state and local government authority in the federal regulatory process represents an important step towards strengthening the partnership among federal, state and local governments.

The vitality and creativity that stems from a robust federal system requires mutual respect for the unique role all levels of government play in developing and implementing public policy. Unfortunately, as your memorandum points out, unwarranted preemption of state and local authority through the regulatory process has too often undermined our intergovernmental relationship.

Your May 20 directive to executive departments and agencies to avoid preemption in regulatory preambles "except where preemption provisions also are included in the codified regulation" sets a tone of increased cooperation and respect. We also appreciate your commitment to adhere to the principles outlined in Executive Order 13132 (Federalism, August 4, 1999) and your discouragement of any preemption unless warranted by underlying federal statutes.

Finally, we stand ready to work with you to carry out your 10-year regulatory look-back at regulations that preempt state and local authority and to initiate any corrective action necessary to ensure that all federal regulations meet the preemption tests you have established.

President Barack Obama
June 5, 2009
Page Two

Thank you again for your outreach to state and local governments. Our members look forward to working with you and your administration to achieve constructive and creative solutions to the many issues facing us at all levels of government.

Sincerely,

Raymond C. Scheppach
Executive Director
National Governors Association

William T. Pound
Executive Director
National Conference of State Legislatures

Tom Cochran
Executive Director
U.S. Conference of Mayors

Larry E. Naake
Executive Director
National Association of Counties

Donald J. Borut
Executive Director
National League of Cities

David Adkins
Executive Director
Council of State Governments

Robert J. O'Neill
Executive Director
International City/County Management Association

[Federal Register / Vol. 74, No. 98 / Friday, May 22, 2009 / Presidential Documents]

MEMORANDUM OF MAY 20, 2009
Preemption

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

From our Nation's founding, the American constitutional order has been a Federal system, ensuring a strong role for both the national Government and the States. The Federal Government's role in promoting the general welfare and guarding individual liberties is critical, but State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.

An understanding of the important role of State governments in our Federal system is reflected in longstanding practices by executive departments and agencies, which have shown respect for the traditional prerogatives of the States. In recent years, however, notwithstanding Executive Order 13132 of August 4, 1999 (Federalism), executive departments and agencies have sometimes announced that their regulations preempt State law, including State common law, without explicit preemption by the Congress or an otherwise sufficient basis under applicable legal principles.

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values. As Justice Brandeis explained more than 70 years ago, "[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

1. Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.

2. Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.

3. Heads of departments and agencies should review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory authorities. Heads of departments and agencies should consult as necessary with the Attorney General and the Office of Management and Budget's Office of Information and Regulatory Affairs to determine how the requirements of this memorandum apply to particular situations.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA,
The White House, Washington, May 20, 2009.

Mr. KILDEE. Mr. Stafford?

STATEMENT OF DOUG STAFFORD, VICE PRESIDENT, NATIONAL RIGHT TO WORK COMMITTEE

Mr. STAFFORD. Thank you. Mr. Chairman, members of the committee, I thank you for the opportunity to speak to you today in opposition to H.R. 413.

First, let's be clear. The ultimate goal of this legislation is to put all of the police, firefighters, and EMTs in the country under monopoly bargaining, regardless of what the states and local governments want.

And as the previous witness just stated, it is probably just the first step, since there will be others that will be coming, looking for the same privileges once this is done.

In addition to imposing monopoly bargaining on countless workers, most relevant to this hearing and to this Congress, I believe, is that H.R. 413 would override state labor laws across the country.

Currently the state and local governments have the authority to enter into monopoly bargaining agreements. Many have chosen to do so. We have heard from some today. But many also have not. This is right now and should remain their right.

The workers that work for the state and local governments work for them. They do not work for the United States Congress. It is impossible, looking at this fairly, to see how this is the federal government's business at all.

Yet under H.R. 413 the federal government would have broad power to impose the terms and conditions of employment for these public safety workers and the local and state governments.

We have heard so far today several claims that this is respectful of state rights and respectful of state laws, respectful of the local and state governments. I find that to be very difficult to believe when the witness before and myself—our home states—would literally have their state labor laws ripped up by this legislation.

That is not respectful of the rights and the sovereignty of these states. These are not minor adjustments. It would literally throw out duly passed legislation passed by North Carolina and Virginia.

Make no mistake, that is the goal of this legislation. There have been many attempts on the state level in some of these states to pass such laws and the people and the legislatures of these states have chosen not to do so. So now we are at Congress trying to force these states to do so. I don't believe this is the right approach.

With the power of monopoly bargaining on the state level comes a price. This bill would have detrimental impact on the budgets of the state and local governments as you also just heard from the previous witness.

We can look to places like Vallejo, California, as an example. One statistic is the public safety budgets of that city had amounted to almost 75 percent of its total budget. It became something that was not tolerable in the city. The city had to declare bankruptcy.

Why is it that we want to force situations like that on other states? There are many, many other examples we are seeing across the country right now where the declining economy, declining revenues, are forcing states that are handcuffed by public sector collective bargaining agreements to make choices that they should not have to be faced with.

In fact, the mayor of Lancaster, Pennsylvania, also recently stated that these struggling cities are "handcuffed" by public sector monopoly bargaining.

Put simply, passage of this bill could be the last economic straw for already struggling communities across our country. I don't really believe anyone can say with a straight face that imposing union collective bargaining is going to lower the cost of government.

Fiscal damage isn't the only thing our communities will have to worry about. In addition, H.R. 413 would only do harm to volunteer firefighters and cities and towns in which they serve. There are

many who have stated that this bill has addressed the issue, as it has changed from previous incarnations of the bill.

However, the protections that are supposedly in this bill are simply inefficient. In fact, the clause is virtually meaningless since it does not prohibit the punishing of what is called two-hatters, volunteer firefighters who are also professionals.

In fact, the IAFF constitution still allows the IAFF to have sanctions against their members who are also volunteers. This part of the bill has not been fixed, and please don't believe that it has.

In conclusion, monopoly bargaining was developed for the private sector. As destructive as that model has proven, it is even more dangerous when exercised in the public sector.

As Forbes Magazine has noted, precisely because of the obvious potential for abuse, even labor union advocates like AFL-CIO president George Meany and Franklin D. Roosevelt viewed unionization of the public sector as unthinkable.

Now, you don't have to agree with me or agree with Franklin Roosevelt or agree with George Meany on that. Members of this committee can and should agree or disagree with that statement on its merits and on their own experience.

But whether you agree, you must ask yourself, "Is this bill sound public policy? Is it our business to override and eliminate the laws of states across the country? Is it wise to impose yet more unfunded federal mandates on our struggling local and state governments? Or is this simply another long line of paybacks to big labor?"

In the interest of sound public policy, I strongly urge you to oppose this bill.

[The statement of Mr. Stafford follows:]

Prepared Statement of Doug Stafford, Vice President, the National Right to Work Committee

Mr. Chairman, Members of the House Subcommittee on Health, Employment, Labor and Pensions, thank you for the opportunity to speak to you today regarding H.R. 413, the so-called "Public Safety Employer-Employee Cooperation Act," which might be more accurately named the "Police and Firefighter Monopoly Bargaining Bill."

As Vice President of the National Right to Work Committee, I'd like to take a few moments to explain why the Committee—and our 2.2 million members—oppose H.R. 413.

First, let's be clear. The ultimate goal of this legislation is to force every firefighter and police officer in the country under union boss control, whether the individual public safety officers want it or not. And whether state and local governments want it or not.

If enacted into law, H.R. 413 and S. 1611 would force monopoly bargaining on every policeman, firefighter, and emergency medical technician (EMT) in the country, putting them under the monopoly control of union bosses.

Under monopoly bargaining, individual workers lose the power to speak for themselves in dealing with their employers, to the detriment of workers and taxpayers.

In addition to imposing monopoly bargaining on countless workers, and most relevant to this hearing and this Congress, H.R. 413 and its companion bill in the Senate, S. 1611, would override state labor laws across the country.

Let's be clear. The other side will tell you this is not about overriding state law. That's a lie. Not a mistake, or a dispute of facts, but a lie.

Currently, the state and local governments have the authority to enter into monopoly bargaining agreements. Many have chosen to do so, some, like my home state of Virginia, have not.

In both cases, this should be their right. These workers work for the local and state governments, and it is impossible if looking at this fairly to see how this is the federal government's business at all.

Yet, under HR 413, the federal government would have broad power to impose the terms and conditions of employment for public safety workers on towns, cities, and counties all over America.

In fact, H.R. 413 and S. 1611 would grant the Federal Labor Relations Authority (FLRA) oversight of the labor-management laws of public safety workers in political subdivisions across the country, stripping localities of the right to govern themselves.

Any state or local government found not to be in compliance with so-called "core provisions" of this legislation would lose its autonomy in its own labor relations to the FLRA.

And this power comes with a price—H.R. 413 and S. 1611 would also have a detrimental impact on the budgets of state and local governments.

A Maryland study conducted by the Department of Fiscal Services, for instance, found that monopoly bargaining would cost the taxpayers between 1.3 and 1.4 million dollars in annual process costs for only 12 "bargaining units" of state employees.

H.R. 413 and S. 1611 would create an almost unimaginable number of new "bargaining units" at a process cost impossible to estimate.

But we can look to places like Vallejo, California—where union bosses have already been granted control over public safety workers—to make an educated guess.

Last year, Vallejo went bankrupt after nearly 75% of its budget was spent on unionized police and firefighters!

And today, despite a $26 billion state budget deficit, out-of-control public sector union bosses aren't shouldering cuts or taking blame for the problems they've caused—they're threatening strikes!

In other states where union bosses have been granted monopoly bargaining privileges over public sector workers, we're seeing the exact same thing.

In fact, the Mayor of Lancaster, Pennsylvania recently stated that these struggling cities are quote "handcuffed" end quote by public sector monopoly bargaining.

Put simply, passage of the Police and Firefighter Monopoly Bargaining Bill could be the last economic straw for already struggling communities.

Can anyone here really say with a straight face that imposing union monopoly bargaining is going to LOWER the cost of government?

During these troubled economic times, passage of the Police and Firefighter Monopoly Bargaining Bill is the last thing we need.

But fiscal damage isn't the only thing our communities will have to worry about should this bill become law.

In addition, H.R. 413 and S. 1611 would only serve to harm volunteer firefighters and the cities and towns in which they serve.

While some are attempting to mislead Members of Congress by claiming otherwise, H.R. 413 and S. 1611 do not protect volunteer firefighting.

Section 8(a)(5) only pretends to by saying that "Nothing in this Act shall be construed * * * to permit parties in States subject to the regulations and procedures described in section 5 to negotiate provisions that would prohibit an employee from engaging in part-time employment or volunteer activities during off-duty hours."

Unfortunately, this clause is totally meaningless.

Saying that "Nothing in this Act shall be construed" to permit agreements prohibiting public employee firefighters from volunteering off duty does not prohibit such agreements, nor does it prohibit local or state ordinances or laws that ban volunteering.

In addition, it does not prevent the IAFF from punishing and discriminating against its members who work with volunteers, even in their off-duty hours, which is clearly called for in their own constitution.

The only way to protect volunteer firefighters would be to add a requirement that states protect the right of individual firefighters to engage in part-time employment or volunteer activities during off-duty hours, without fear of reprisal from any employer or labor organization; and refuse to certify as an exclusive bargaining agent any labor organization that retaliates against, discriminates against, or disciplines its members for engaging in part-time employment or volunteer activities during off-duty hours.

Finally, while this legislation claims to have a ban on strikes, there's ample evidence that this ban simply would not work.

As we've seen time and time again, legal provisions allegedly intended to ban strikes have always proven useless in states and localities where public sector monopoly bargaining is authorized.

Union bosses simply refuse to call off their illegal strikes against vital services until all their demands are met—including amnesty for themselves and their followers.

In fact, states enacting laws that mandate monopoly bargaining have experienced a 400% increase in strikes against public services.

Even former Congressman William Clay, the ranking member of the Education and Workforce Committee and cosponsor of the same legislation in the 106th Congress, admitted the "no-strike" clause is meaningless. He said, and I quote:

I don't think any employee is going to give up his right to strike * * * I don't care how you legislate against strikes. Most states now have legislation prohibiting strikes but, in effect, in reality, they have not stopped strikes.

So it is clear from our experience on the state level, such a band is utterly meaningless.

Monopoly bargaining was developed for the private sector. As destructive as that model has proven, it's even more dangerous when exercised in the public sector.

As Forbes magazine noted, "Precisely because of the obvious potential for abuse, even labor union advocates like AFL-CIO President George Meany and Franklin D. Roosevelt viewed unionization of the public sector as unthinkable."

Now, members of this Committee can agree or disagree with that statement. But whether you agree, you must ask yourself—is this sound public policy to override the laws of states across the country? Is it wise to impose yet more unfunded federal mandates on our struggling local and state governments? Or is this simply yet another in a long line of paybacks to union bosses.

In the interest of sound public policy, I strongly urge you to oppose H.R. 413, the misnamed "Public Safety Employer-Employee Cooperation Act."

Mr. KILDEE. Thank you.

Mr. Tate?

STATEMENT OF JIM TATE, FIREFIGHTER AND PRESIDENT, FORT WORTH PROFESSIONAL FIREFIGHTERS

Mr. TATE. Excuse me. Thank you, Mr. Chairman, Ranking Member Price and distinguished members of the committee for inviting me to testify today.

My name is Jim Tate. I am at the end of—or heading towards the end of my career with 25 years in the Fort Worth Fire Department. I have served as a battalion chief there for the last 11 years. I am also the president of the firefighters association there.

I have spent the better part of my career without access to collective bargaining. Looking back, even with just a preview of what collective bargaining can do in one agreement with the city, I think that a municipality without collective bargaining—excuse me—is missing an opportunity to improve on the delivery of emergency services.

In November of 2007 the majority of the citizens of Fort Worth voted to give us a right to collectively bargain with the city. We won the right to be treated with dignity, the right to have a meaningful say in how we protect ourselves and in how we protect the public.

What we did not win is a right to break the back of the city budget or force the city to agree to anything it cannot afford. We still answer to the city council and to the city manager. The only difference is today that we are a key partner in how decisions are made.

When we bargained with the city for the first time in the fall of 2008, we had one goal in mind, to protect safe staffing levels. I am proud to report that we are close to ensuring four firefighters will ride on every rig, in line with national safety standards. I credit collective bargaining with making this goal reachable.

It is almost impossible to understate what minimum staffing means to public safety. We are the foundation of this nation's

homeland security. It has been well documented that minimum staffing both improves emergency response and protects the safety of the firefighters.

I cannot tell you that collective bargaining single-handedly cured all the challenges that our department faced overnight, but it gives us a framework to address those challenges. And it certainly has changed the tone. It has opened a dialogue that is valuable to the firefighters I represent and to the taxpayers who pay my salary.

If we achieved minimum staffing in our first agreement, I can only imagine what strides we can make in the next 10 to 20 years.

My experience has been that collective bargaining is a guaranteed lifeline of communication that can be and should be put to use to improve the delivery of emergency services to protect firefighters and to protect the citizens alike.

During our campaign for collective bargaining rights, our fellow citizens were flooded with misinformation about collective bargaining. They were told that their taxes would go through the roof.

They were told that Texas is a right-to-work state and that firefighter collective bargaining wouldn't work. They were told that collective bargaining would drive out business and hamper growth. Every one of their attacks has proven false.

In fact, one major fact that helped make the citizens' mind up, I believe, was the fact that every major city in Texas that already had collective bargaining had a lower tax rate than Fort Worth.

The fact is the cities in Texas with collective bargaining have in place some of the lowest tax rates in the state. Collective bargaining and the right to work can and do live side by side.

Our department and the other 21 departments in Texas with collective bargaining rights can attest that a basic collective bargaining system can thrive in a right-to-work environment.

We also heard that collective bargaining would force Fort Worth to accept agreements it cannot afford. The only thing that the Fort Worth law and the bill the subcommittee is studying today mandates is a forum to talk through issues important to the firefighters and to the city.

The city maintains full control over its budget, make no mistake. Although Fort Worth has not seen some of the budget pains that other cities have, I can tell you that we will adjust our request to the cities in regard to those budget realities and offer ideas geared towards those limits, just like our brothers and sisters across the country have done, giving up guaranteed pay raises to make sure that they don't have to close fire companies.

We will always work with the city to solve those problems because we are on the same boat. The bottom line to me is that collective bargaining is a process that solves problems and gives a measure of dignity and fairness to public safety officers.

Collective bargaining may not give us all the answers, but at a minimum it puts our community and our nation on the best path to reach them. What the Fort Worth firefighters asked for in 2007 and what this bill asks for is one and the same, an opportunity to talk through issues that affect all of us.

It gives states and cities the flexibility to get there own—on their own and in their own way. Thank you again for asking me to testify. I will be glad to answer any questions.

[The statement of Mr. Tate follows:]

Prepared Statement of Jim Tate, President,
Fort Worth Professional Fire Fighters Association

Thank you Chairman Andrews, Ranking Member Price, and distinguished members of the Subcommittee for calling this hearing and for inviting me to testify. My name is Jim Tate and I have served the community of Fort Worth, Texas for 25 years as a fire fighter in the Fort Worth Fire Department. I have held the rank of Battalion Chief for the last 11 years. During my time with the Department, I have had the privilege to serve as President of Fort Worth Professional Fire Fighters Association, International Association of Fire Fighters (IAFF) Local 440 for 14 years. I also bring experience serving on standards-setting committees, such as the National Fire Protection Association's Committee on Bunker Gear, which publish national consensus standards on issues like personal protective equipment, minimum staffing, training, fitness, incident command, and other fire service issues. I have experience peer-reviewing homeland security grant applications, as well.

Let me begin by giving you some background on my department. The Fort Worth Fire Department has a history of strong fire protection services. The City of Fort Worth is the fifth largest city in the state of Texas. Our fire department dates back to 1873, and became a professional department just before the turn of the century, in 1893. We protect a population of over 700,000, and growing, spanning 344 square miles. We have 42 stations in 6 battalions. Our department employs 468 fire fighters, 201 engineers, 122 lieutenants, 86 captains, 24 battalion chiefs, and 3 deputy fire chiefs. Our department specializes in aircraft rescue firefighting, swift water rescue, technical rescue, explosive ordnance disposal, and hazardous materials responses.

We are a busy department. In 2008, we responded to over 3,000 fire calls and in excess of 50,000 EMS calls. As far as our response times go, we are providing emergency services to the citizens of Fort Worth more quickly and more effectively than ever before. The share of sub-five minute response times has grown from 62% in 2007 to an estimated 75% in 2010. We recently opened the doors of two new fire stations in North Fort Worth, to improve our department's ability to deploy aerial apparatus to northern areas of the City, reducing response times for calls requiring that apparatus by 20 to 30 minutes.

Fire Fighters and Collective Bargaining

I have spent the better part of my career in the Fort Worth Fire Department without access to collective bargaining. So collective bargaining is relatively new to me. Looking back, even with just a preview of what collective bargaining can do in one agreement with the City, I would say that at the very least, a municipality without collective bargaining is missing an opportunity to improve on the delivery of emergency services. But more than that, withholding the right to collectively bargain is a denial of a measure of fairness and dignity to fire fighters who put their lives on the line day in and day out for the communities they serve. We care deeply about serving our cities and protecting our neighbors. That is why we swear to an oath to protect our cities. That is why we report to work and take the kinds of risks we take. We train, we prepare, and we work to sacrifice for our fellow citizens.

For so long our voices have been shut out from what we consider a core right: the right to be heard on the job. Not only do we want competitive wages and benefits, but every fire fighter in this country is a trained expert in what they do. They are well-trained. They have seen it all. And they have the stories to show for it. The more points-of-view and experiences from boots on the ground on staffing issues, equipment issues, operations issues, and benefit issues, the more informed we are as a city and the better the solutions we will achieve together. You would be surprised at what a little dialogue can do. Dialogue can work wonders. It keeps safety and morale at the forefront of the delivery of emergency services, where dialogue is critical because so much is at stake. When it comes to public safety, the more voices and perspectives that are in the room when decisions are made, the more problems a city can solve, and the more cost-effectively they can solve them.

And at the same time, collective bargaining protects fire fighters. The dangers that public safety professions pose make collective bargaining an essential tool to protect the health and safety of frontline responders. The dangers we face and the toll those hazards take on the men and women on the frontlines make our profession the nation's most hazardous occupation. The statistics illustrate just how perilous this job is. Almost one-third of our members suffer injuries in the line of duty every year. Ninety-three of my brother and sister fire fighters paid the ultimate

price in 2009, including 3 of my Houston brothers. Ten have fallen in the line of duty already in 2010.

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—and our own safety—that we bring to the bargaining table. The issues that are most important to us go beyond wages and benefits. We are more focused on how we can respond to emergencies more effectively and more safely, to improve the caliber of service that we provide to our communities.

Our job is to take the unthinkable, life-threatening risks so others don't have to. We believe we have valuable perspectives to share. We think those perspectives are simply worthy of a city's ear. We want to make certain that the unparalleled experiences, stories, and best practices from the frontlines are considered when decisions about public safety are made. That is precisely what we in Fort Worth now have and what H.R. 413 makes certain: that frontline responders have a direct line of communication with their employers about how they do their jobs and how they protect the public. This bill stands for the principle that we deserve this right and that this right helps protect the public.

Collective Bargaining in Fort Worth

In November 2007, a majority of the citizens of Fort Worth voted, as is the law in Texas, to give us a right to collectively bargain with the City. When we won collective bargaining in Fort Worth, we became the 22nd city in Texas to ratify collective bargaining. About a year after we prevailed in the referendum, we started discussions with the City and now we are on the cusp of signing our inaugural agreement.

In 2007, we won the right to be treated with dignity, the right to have a meaningful say in how we protect ourselves and in how we protect the public. Fort Worth and its fire fighters are a stronger partnership now working toward the same goal: to protect the citizens as safely and effectively as humanly possible within the City's means. What we did not win is a right to run roughshod over the City budget, or to force the City to agree to anything it cannot afford. We still answer to the City Council and to the City. What we are now is a key partner in how decisions are made.

When we bargained with the City for the first time in the history of the City of Fort Worth in the fall of 2008, we had one goal that overshadowed all others: protect safe staffing levels. It is almost impossible to understate what minimum staffing means to public safety. It has been well-documented that minimum staffing is essential for safe and effective emergency response. Safe staffing levels protect the lives of fire fighters and the lives of the citizens of Fort Worth. Our mayor, Mike Moncrief, said it best in his State of the City speech a couple weeks ago, "Safe communities are also defined by the quality of fire services." We think minimum staffing will help define the City of Fort Worth as one of the safest communities in our state.

We went in to our very first negotiation willing to sacrifice wages and benefits, if need be, to preserve that model fire protection standard. I am proud to report that we are close to becoming one of only two agreements in the state of Texas that will guarantee that four fire fighters will ride on every rig, in line with National Fire Protection standard 1710. And I credit collective bargaining with making this goal reachable.

Let me say that cities can and do deliver emergency services without collective bargaining in other cities in Texas and elsewhere in the South. I cannot testify to you that collective bargaining single-handedly cured all of the challenges that the Fort Worth Fire Department faced overnight. But it does give us a framework to address those challenges. And it certainly has changed the tone, and has opened a dialogue that is valuable to the fire fighters I represent and to the taxpayers who pay my salary. If we achieve minimum staffing in our first agreement, I can only imagine what strides we can accomplish in the next 10 to 20 years.

My experience has shown me that collective bargaining is a guaranteed lifeline of communication that can be—and should be—put to use to improve the delivery of emergency services to protect fire fighters and citizens alike.

Setting the Record Straight

During our campaign for collective bargaining rights, our fellow citizens were flooded with misinformation and scare tactics about collective bargaining. They were told that property tax rates would go up. They were told that Texas is a right-to-work state and that fire fighter collective bargaining would allow unions to dominate and bankrupt Fort Worth. They were told that collective bargaining would

drive out business and hamper growth. Every one of their contentions has been proven false.

The fact is, the cities in Texas with collective bargaining in place have some of the lowest tax rates in the state. And Houston and Austin, both places where voters approved collective bargaining rights for their fire fighters, have witnessed steady growth since collective bargaining was enacted. Collective bargaining and right-to-work are not diametrically opposed, as some believe. Fort Worth Fire Department and the other 21 departments in Texas and those departments that bargain in other right-to-work states can attest that a basic collective bargaining system can thrive in a right-to-work state.

We also heard from our opponents that unions would have veto power over responding to emergencies. This is just plain absurd. As a battalion chief myself, I can tell you that my first and most important responsibility is to my community and to my city. When we run calls and coordinate emergency responses, our only concern is keeping the citizens safe and keeping our fire fighters safe. Collective bargaining could not be further from our minds in those emergency situations. I value these commitments more than I can say. To me, the notion that collective bargaining would throw a wrench into emergency responses and give the union veto over a response is beyond the pale, plain and simple.

We even heard from those opposing the ballot measure that extending basic collective bargaining rights to fire fighters would lead to strikes. These claims are equally as absurd and border on offensive. This bill prohibits strikes, and so does our law in Fort Worth. I don't know how many strike prohibitions it takes to make this argument go away. Going on strike betrays the fire fighter ethic and it contradicts who we are and why we serve. No fire fighter I know believes in strikes. And even if we did, having collective bargaining eliminates what might drive a worker to strike in the first place: not being heard at work. Collective bargaining destroys the motivation behind strikes. It prevents strikes because it provides a forum to address issues and concerns. With collective bargaining, there are differences, but they do not fester, they can be resolved.

We also heard that collective bargaining would force Fort Worth to accept agreements it cannot afford and mandate tax increases. The only thing that the Fort Worth law and the bill the Subcommittee is studying today mandates is a forum to talk through issues important to the fire fighters and to the City. We are in this together. And the City maintains full control over its budget. Although Fort Worth has not seen budget pains on the same scale as other cities during this Great Recession, I can tell you that we would adjust our requests to the City's budget realities and offer ideas tailored to the economic shape the City is in. Fire fighters are taxpayers, too. We will always work with the City to solve those problems because we are all in the same boat.

Although I strongly disagreed with the arguments the opposition espoused, it was generally a respectful and courteous debate. Fortunately the voters of our conservative city agreed that we deserve a voice at work and that collective bargaining is an essential element in labor and management working together on behalf of the City.

Conclusion

The bottom line, to me, is that collective bargaining is a process that solves problems and gives a measure of dignity and fairness to public safety officers who risk so much for the sake of their fellow citizens.

Collective bargaining may not provide all of the answers. But at a minimum, it puts the community on the best path to reach them. And it is the public safety community's best and proven tool to enable labor and management to come together for their mutual benefit. It is a conversation and relationship facilitator, two things that are absolutely indispensible in the fire service and in the rest of the public safety community. Nowhere is the relationship between management and labor more important than in the delivery of emergency services when lives are at stake. As much as detractors may argue that a collective bargaining forum forces the City to agree to something, they cannot change the fact that, in this entire process, at every step of the way, ultimate control still rests with the City, not the fire fighters, and not anyone else.

What our Fort Worth fire fighters asked for in 2007 and what this bill asks for is one and the same: a simple forum to talk through issues that affect all of us. And it gives states and localities the flexibility to get there on their own.

So I suppose you could boil what we have in Fort Worth and what this bill requires down to the saying: a good process produces a good outcome. And when the outcome is necessarily life and death, the process is that much more vital. When rank-and-file fire fighters have a meaningful role in municipal decision-making, ev-

eryone is better off. Fire fighters are safer. Citizens are safer. The community is safer. And the nation is safer. Collective bargaining is the right thing to do by our public safety officers and it is a trademark of an effective emergency response system.

Mr. KILDEE. Thank you very much for your testimony.

You have all been very disciplined. I haven't had to use the gavel at all up here today. Appreciate that very much.

Let me ask the—I have great respect for mayors. You know, I belong to a collegial body, so if things go wrong around here, I can blame the other 434, but the buck really stops at the mayor's desk in various ways in various cities, but I always had a great respect for the chief executive officer of our cities. You are closest to the people.

How has the ability to negotiate with the FOP and IAFF helped your city's budget?

Mr. SMITH. There are a number of things I would like to say to that point. Easily, because we have the Ohio revised code and it sets up rules and guidelines that—you obviously work within those guidelines and the rules, so it is very understandable what actions and reactions are and the responsibilities of both sides, management's rights, et cetera.

Just recently, we have had negotiations with IAFF Local 291, and we actually worked with them to a lower percentage of salary increase. We also had a zero percent increase in 1 year.

We also looked at minimum staffing and how that affected our budget, and we had some compromise on their side to reduce the minimum staffing.

We also had an understanding on how they could spread their vacation throughout the whole year instead of just during the prime summer months to give us an opportunity not to have overtime for those replacements when people are on vacation.

And those are all cooperative efforts. And we have had a number of things on participation rates of our health insurance, where they used to pay a very small dollar amount per month, and in the last two contracts we have been able to get them to a percentage, and now they are in a contract where they are paying up to 14 percent of the actual. In years before it was either $20 or $50, depending on whether or not they were single or a family.

So we have had very good participation by the FOP as well as the IAFF on our financial problems. If we are in a tough time, everybody sits at the same table, and so those are the things that we have been able to do ourselves.

Mr. KILDEE. In Lancaster, are there are large number of the citizens who belong to collective bargaining units?

Mr. SMITH. I would imagine in Lancaster we have a number of glass manufacturers and other manufacturers, and Anchor Hocking is our major employer on the private sector side, and they certainly have a number of unions in there, used to be the American Flint Glass Workers. Now I think they are part of—or the steel corporation for the steel union.

And we have Ralston and we have Diamond Power, and there are a lot of iron workers in the one and the food processors in the

other. So we have a—probably diverse community of unions and non-union personnel.

Mr. KILDEE. So there is a—some mutual respect. There are various unions in your city in the private sector and in the public sector and that—would that contribute to the morale of—so your police and firefighters—the fact that they, too, can bargain collectively with their employer?

Mr. SMITH. Well, whether or not you use the term collective bargaining, we certainly talk to each other. We communicate. When issues come up either major or minor, we talk about them. We don't let them fester out in somebody's backyard and try to figure out what are we going to do about it later.

The communication is very open between the mayor and the service safety director and the chiefs and their—the membership of both FOP and the IAFF.

A lot of times, in fact, I don't know that we have any formal grievances, but we certainly have communication on issues, on how to improve working relationships, the type of equipment that is available, how to go after grants, be it state or federal grants, to help us fund the equipment.

I don't know if it is Lancaster or the water we drink or just what, but we seem to be able to understand how to get along with each other.

Mr. KILDEE. And so that helps in other matters, like seeking——

Mr. SMITH. Absolutely.

Mr. KILDEE [continuing]. Federal grants and state grants.

Mr. SMITH. Yes, sir.

Mr. KILDEE. Okay, very good. Thank you.

Mr. Thielen, your state of Virginia prohibits the right of public safety officers to collectively bargain. However, states nearby do permit the right of public safety officers to bargain collectively.

How does the Virginia law impact your ability to recruit and retain police officers?

Mr. THIELEN. That is a very good question, sir. It impacts it significantly. Every year my organization does a pay study of the metropolitan Washington area and, of course, most of the people that we are comparing to have collective bargaining agreements in place.

When we look at total compensation, we are consistently ranked 9th or 10th in the region and we have no process by which to bring that fundamental fairness formally to the table to explain to these elected officials that that is a problem and we do have to—we have lowered our hiring standards partially as a result of that.

Mr. KILDEE. Thank you.

My 5 minutes have expired, and I yield 5 minutes to the gentleman, Mr. Price.

Mr. PRICE. Thank you, Mr. Chairman. I appreciate that.

And I want to just begin by echoing the comments of many, and that is that we all honor the service of our public safety officers and our firefighters, every single one of them. They are all heroes in our communities. We love them all.

They do a great, great job, whether they were the folks who responded on 9/11 in New York or whether they are the people who

are responding as we sit here today to the challenges in our communities.

And the question here really isn't whether or not police officers and firefighters ought to have the right to join unions or collectively bargain. That is not the question.

The question is where should that decision be made. Should we federalize the—and mandate collective bargaining from the federal level to states and localities? That is the question that is on the minds of many of us.

Mr. Hankins, I want to draw your attention to the bill itself, which states that in order for a state law to fit the requirements of the bill, it would have to provide for bargaining "over hours, wages and terms and conditions of employment."

And to me and many of us, that seems to be somewhat broad, whether or not it is determining what kind of weapon a police officer would be required to utilize—again, decisions made at the federal level—whether it is the number of firefighters on a truck, whether—those kinds of things.

Do you believe that it—the bill has that scope, potentially?

Mr. HANKINS. Mr. Price, certainly, potentially it does. And we don't know the answers to some of those questions yet. You all know the phrase around these buildings that the devil sometimes is in the details. The details are not known yet.

It will matter a lot what the Federal Labor Relations Authority later decides by rule-making about, for example, what are negotiable conditions of employment.

Many of the things you just mentioned—the number of firefighters on a fire truck required—possibly that is a condition of employment that becomes negotiable under the rules that might be adopted under this bill.

There are other things, like in the state of Illinois whether law enforcement officers get to bargain what types of weapons that they could carry, which now under Illinois law they cannot.

Florida and Maine would have to move collective bargaining legal matters from an existing agency into the state courts, for example. That is another right of state law.

Ohio now, for example, permits by silence in state law permits public sector workers to strike, but not under this bill. And I don't know why the Congress should tell the people of Ohio that that needs to be the law in Ohio. It is not now.

Mr. PRICE. I guess that is the bottom line, is that the—when there is a decision to be made under 413, the decision is made at the federal level, not at the state or the local level, and that, again, is the concern that many of us have.

It is not whether or not firefighters or police officers ought to have the right to join a union or collectively bargain.

Mr. HANKINS. Mr. Price, we share that concern. Listen carefully to the comments from Chief Tate.

Mr. PRICE. Yes.

Mr. HANKINS. The people of Fort Worth made that decision under Texas law about collective bargaining in that city.

Mr. PRICE. Yes, I was going to——

Mr. HANKINS. And well they should have. But this bill would mandate many, many requirements, expensive ones, extensive ones, perhaps unconstitutional ones, on all the states.

Mr. PRICE. Yes. Thank you.

Mr. Stafford, I want to explore a little bit the costs. You alluded to the cost to states and localities in your testimony and I raised in my opening remarks about the concerns that I have about it being—especially at this time, when states and locales are challenged at best.

Have you done any analysis on the cost impact or would you be able to expand at all on—with other information about the costs that this bill might have to states and localities?

Mr. STAFFORD. Well, it—Mr. Price, thank you for the question. It is kind of no formal analysis but, I mean, you could pick up the newspaper and read, and I have got a few clips here, about the city of Green Bay, Wisconsin putting the squeeze on their budget from the health benefits for their public safety workers.

We talked about the city of Vallejo that declared bankruptcy. We have examples from Toledo; Flint, Michigan. I have got a bunch of them I could put into the record for you, and I will provide more to staff that could pass around to members.

We have got dozens of examples of state governments that are having problems, and local governments, because of the situation.

One of the witnesses earlier mentioned in Fairfax he believed that the Fairfax were 9th or 10th in the region. I don't have any knowledge of that. I certainly respect his authority on that.

But I would note that I am guessing the reason he brought that up is because he would want that to be raised, and that is perfectly well their right within Fairfax to try to get whatever they think they can get from the Fairfax County government.

But to pretend that this bill has no cost is just not true.

Mr. PRICE. Thank you.

I want to thank all of the witnesses today. My time has expired.

Chairman ANDREWS [presiding]. Thank you, Dr. Price. I want to just take a moment to express my apologies to the witnesses and to my colleagues for coming late—actually, trying to work on the problem of the health care costs this morning. I was engaged in that.

I want to express my appreciation to the witnesses for their diligent preparation. I had a chance to read your testimony last night, and each of you is making a very significant contribution to the committee. Thank you.

I especially want to thank my friend Dale Kildee, the author of the bill in front of us, for so graciously conducting this hearing to this point and express to him my personal thanks and my support for his excellent legislative efforts.

At this time, the chair recognizes Mr. Hare for 5 minutes.

Mr. HARE. Thank you, Mr. Chairman.

Mr. Stafford, in your written testimony, you refer to union bosses seven times. I am interested to—perhaps you could share with me your definition of union boss.

Would you say that Mr. Tate, Officer Thielen and Officer Canterbury would fall in—into that category, assuming—I don't know what you—what your definition of a union boss is.

Mr. STAFFORD. I would say the definition would be the folks that are at the head of pushing legislation like this, like——

Mr. HARE. Do you think it might be better if you referred to them as the presidents of their local unions and leadership within the union? Do you think that wouldn't be quite as inflammatory?

Mr. STAFFORD. If that would make the object of the committee to go back to whether or not this is a good thing for Congress to do and whether or not it is overriding state law, sure.

Mr. HARE. Well, I think we can argue the merits of the bill. Let me just say I think we can argue the merits of the bill, but I think, to be—and I suppose I would fall into that category, too, since I happen to have been a former president of my local union and a steward there.

And it is just interesting to note, I sit on this committee and to keep hearing this term "big labor" and "union bosses" over and over again—and I just want to say I think it is an honor to serve as the president of a local union and as a steward in representing ordinary people each and every day.

And I thank you for what you do.

Let me ask you this, Mr. Stafford. You said this bill would "force monopoly bargaining on every police and firefighter," but the bill provides that unions will only be established in places where a majority of officers or firefighters choose to form one. Is that correct?

Mr. STAFFORD. I believe that is true. However——

Mr. HARE. Okay. And if that is——

Mr. STAFFORD. However——

Mr. HARE. Well, I am just—let me say——

Mr. STAFFORD. Okay.

Mr. HARE [continuing]. So if you—can you point to anywhere in this bill that would force a union into existence against the wishes of the majority of the safety officers?

Mr. STAFFORD. Against the majority, no. But what about the other 49 percent of the——

Mr. HARE. So—so——

Mr. STAFFORD [continuing]. Police and firefighters that didn't? Can I finish my answer?

Mr. HARE. Well, all of us are elected here by a majority. I would assume that wouldn't the majority rule? I mean, if the majority of these folks want it, you find a problem with that?

Mr. STAFFORD. Yes.

Mr. HARE. Okay.

And the National Labor Relations Act, the book—the law that has been on the books for 75 years, states that it is the national policy of the United States to encourage collective bargaining.

From the testimony and from just what I have heard just now, I gather you disagree with the national policy on—with the National Labor Relations——

Mr. STAFFORD. I believe that unions should be representing those who wish to be represented by them.

Mr. HARE. Then I am assuming that you believe that any union, for any purpose, including police and fire, is a bad idea. And if not, maybe you could share with the committee one group of people who you would advocate that a union be in existence for. Can you name one group?

Mr. STAFFORD. You just kind of veered off a little bit there. What I said was that I believe that they should be able to represent those who ask to be represented by them.

Mr. HARE. All right. Fair enough. But I am asking you specifically, can you name one group of people that you would—you personally or your organization would advocate having unions represent people for?

Mr. STAFFORD. I believe any group that wishes it, sir.

Mr. HARE. So any and all. So you are all for it, then.

Mr. STAFFORD. Any group of private workers—private sector workers.

Mr. HARE. And that is okay if it is done by a majority vote?

Mr. STAFFORD. As long as those that they are representing are the ones that voted to be represented, sure.

Mr. HARE. Mr. Hankins, you mentioned the problems in Vallejo, California, and they filed for bankruptcy. What is the latest development with respect to the collective bargaining in Vallejo?

Mr. HANKINS. There have been some agreements, some modification of the agreements. The fact remains that that city had more than 75 percent of its general fund cost in labor costs attributable to collective bargaining agreements with police officers and firefighters that got them into that trouble, into that box, that required the expenditure——

Mr. HARE. So it is the fault of the police officers, the firefighters?

Mr. HANKINS. It was the fault, perhaps, of overly generous previous agreements that became binding and very expensive long-term financial obligations.

Mr. HARE. Well, let me just say, Officer Thielen—my time is just running out—I appreciate the fact—and Officer Canterbury and Mr. Tate—what you do each and every day.

And we hear a lot about, you know, our first responders. And a lot of those people who went in and didn't come out on 9/11, like you said, were union people who—all they wanted to do was have a decent living for their families. They just wanted to be able to work out a difference with a collective bargaining agreement.

And here we are. We are still slugging it out for benefits for the—some of those people who survived that went in when other people were leaving. So from our perspective, it seems to me if we really want to honor you, what we ought to do is give you the right to have a collective bargaining agreement with majority rule.

We ought to give you the absolute right to do the best you can to protect your family and to be able to protect you after—if you become ill after you are doing something. And I think to do any—anything less, from my perspective, really doesn't honor the sacrifices that you and your members make every day.

So I just want to thank you, Mr. Tate, and congratulations on your 25 years.

Thank you, Mr. Chairman.

Chairman ANDREWS. Thank you, Mr. Hare.

I am pleased to recognize the ranking member of the full committee, the gentleman from Minnesota, Mr. Kline.

Mr. KLINE. Thank you, Mr. Chairman.

Thank all of you, the witnesses, for being here today. And like the chairman, I want to apologize for being late. This place has you

stretched in so many different directions, and we simply can't be everywhere at once.

And I kept looking at my watch as I was listening to the commander of AFRICOM and commander of European Command and saying, "Am I going to get to this hearing?" So again, I apologize and thank you very much.

My friend and colleague from Illinois, Mr. Hare, pointed out that all of us up here are elected, officials elected by a majority. What was left unsaid is we are elected by a majority in a secret ballot election.

And so I want to thank you, President Canterbury, for the position that the Fraternal Order of Police have taken in stepping out to protect the secret ballot in union organizing operations and your very strong support of my position—and I think the vast majority of Americans—in opposing the egregious Employee Free Choice Act. I just wanted to make that public and thank you publicly for that very strong position.

Mr. CANTERBURY. Thank you, sir.

Mr. KLINE. Let me start here.

Mr. Stafford, Section 6 of the bill is supposed to prohibit public sector employees from striking. Do you believe that that language, Section 6, is sufficient protection against work stoppages and slowdowns? And can you cite an example of how it might be insufficient?

Mr. STAFFORD. Let me begin by saying that I don't—the answer to my question does not imply that I believe or don't believe anyone would be trying to force a strike.

As a couple of folks have pointed out here that your being against unions or being against certain things—I am the son of a 25-year New York City police officer, proud PBA member. That was his right.

I don't believe that he nor the folks that I grew up knowing wanted to go out on strike, so I don't believe that is the case here.

That being said, do I believe the protections in this bill are sufficient? There are no protections against public sector strikes unless the public officials who are tasked with upholding that law actually do so.

You know, the Taylor Law in New York prohibits public sector strikes. The simple way that that has always been gotten around is the public sector strike happens. Before they come back from a strike, amnesty is negotiated with the people in charge of enforcing that law.

Again, to my knowledge, that has not been a public safety officer strike, so I am not specifically speaking about that. But public sector union strikes happen. They happen with or without strike prohibitions being in the state law.

Mr. KLINE. We have a microphone failure. Thank you.

Mr. Hankins, I am going to ask you a somewhat convoluted and legal question here. I am actually going to read it to make sure that I don't mess this up.

You know, unlike like the chairman, who is a renowned attorney, I have to grope my way through these things. I just love how we do stuff here.

Section 4(B)(5) of the bill requires that for state labor law to be in compliance with the federal standard, it must allow for rights and remedies to be enforced through state courts.

What about states where the enforcement process is through an administrative agency at least in the first instance? For example, in many states public sector bargaining laws are administered through a state labor commission roughly analogous to the Federal National Labor Relations Board.

Do you read H.R. 413 to permit the—to permit that practice continue, or do we need to be more clear on that point?

Mr. HANKINS. Mr. Kline, I am not a lawyer who is a constitutional scholar. I am the former; at least I used to be. I am not the latter.

But I am interested in two actual examples of exactly what you just said. Let me say that again. Florida and Maine now have in their state laws provisions for adjudication, fact-finding, by administrative agencies with respect to some collective bargaining legal matters.

This bill would move those matters from those agencies established in the laws of those states and others into their state courts. Don't know why that should be. That is what the bill says.

Mr. KLINE. Is that language that we can fix?

Mr. HANKINS. This body certainly, sometimes, fixes language that causes unintended—perhaps intended—consequences.

Mr. KLINE. But we could change the language in the bill before we move it to the floor for passage.

Mr. HANKINS. Yes, sir, certainly.

Mr. KLINE. Okay, thank you.

I yield back, Mr. Chairman.

Chairman ANDREWS. Thank you very much, Mr. Kline.

The chair recognizes the gentlelady from New York, Mrs. McCarthy.

Mrs. MCCARTHY. Thank you, Mr. Chairman.

And I appreciate the testimony of everyone.

Mr. Steele, I wanted to ask you, because you had mentioned in your opening statement that there were many parts of the bill that basically you said that do not interfere with the—whether it is constitutional or not, and yet we heard Mr. Hankins basically say that many parts of the bill were unconstitutional.

Do you have any opinions on that?

Mr. STEELE. The bill has been carefully vetted through the existing constitutional law and cases to ensure that it meets constitutional muster.

The Garcia decision, which the Supreme Court held that wage and hour laws, the Fair Labor Standards Act, could be constitutionally applied to state and local government employees, including public sector employees, remains the law of the land, and there has been no decision since then to suggest otherwise.

This bill is actually less intrusive than the Fair Labor Standards Act because it does not impose hourly amounts. It does not impose certain overtime amounts. It simply requires the parties to meet and to bargain. It is a much lower threshold.

As far as the enforcement mechanism, I would refer you to the Hodel case in which the Supreme Court in 1981 upheld the con-

stitutionality of the Surface Mining and Reclamation Act because that act did not commandeer or require the states into regulating surface mining.

Instead, if a state chose not to enact a program that complied with the federal requirements, the full regulatory burden for that would fall on the federal government, which is the same structure that exists in H.R. 413.

Mrs. MCCARTHY. So it is your opinion that basically this piece of legislation would hold up constitutionally if challenged.

Mr. STEELE. Yes, and the reference to the CRS study merely stated that there is a question raised involving Congress' authority under the commerce clause. It made no conclusions whatsoever that this legislation was contrary to or unconstitutional.

And in my view, it has never been an adequate reason for the Congress to fail to act out of a fear that some future Supreme Court may change the law in a way that we don't anticipate or may not appreciate.

Mrs. MCCARTHY. Thank you.

Mr. Tate, you mentioned briefly in your testimony that you spent half your career without having collective bargaining. Then when you were able to get it for your city, could you go into a little more detail on how that made safety improvements for your workers?

Mr. TATE. Yes. Most of my career, in fact, has been spent without collective bargaining.

And what it forced us to do before then, since often times during various city administrations—they didn't want to hear what we had to say if we didn't agree with them on an issue, so our only recourse at that time was to get involved politically and remove people politically so that someone would listen to us.

Now they come to the table. We find out we have a lot of common ground. They found out that we weren't asking for a lot of money. We just wanted to make sure we had safe staffing that meets national standards. And that is the kind of success we have seen in Fort Worth.

Mrs. MCCARTHY. Thank you.

Mr. Stafford, you mentioned many times that basically the—this legislation will lead to strikes, and I was just telling—wondering if you would tell us the last time a police officer or a firefighter union had bargaining rights that went on strike.

Mr. STAFFORD [continuing]. I am not aware of them. There are certainly many public sector workers, though, that can be cited as recent examples.

And again, I am not saying that police and firefighters are looking to go on strike. I am simply saying that it has been a result of public sector unionism. And the bill's prohibitions on strikes are not adequate.

Mrs. MCCARTHY. Well, the only thing I could say is certainly we have a very active fire department and police organizations in New York, and many a time when I personally felt that they were treated unfair, especially with salaries, they still never went on strike. And yet things were worked out.

Mr. Canterbury, do you have anything to add to that?

Mr. CANTERBURY. Absolutely. I mean, we are not only police and firefighters, we are citizens of these communities. And you know,

I would, frankly, say that when somebody is breaking into your house, you are not calling a schoolteacher. They are doing their job. And that is what we do.

And those non-vital service employees—they use the right to strike that is allowed in state law. That is their business. But I have never met a policeman or a fireman that would participate in an organization that would not respond to public safety.

Mrs. MCCARTHY. Thank you, Mr. Chairman, for this hearing.

Thank you, gentlemen.

Chairman ANDREWS. Thank you very much.

Mr. Tierney, did you care to question?

Well, I will take the prerogative, if I may, for a few minutes.

Again, thank you to the witnesses for excellent preparation.

Mr. Stafford, you make the assertion that there is a causal connection between unionization of police and firefighters and the cost of government. Are there any data that show that spending in police and fire—in communities with unionized police and fire departments is higher than communities without it?

Mr. STAFFORD. I am sorry, is there a study that says that it is higher in those——

Chairman ANDREWS. Yes.

Mr. STAFFORD. I don't believe—I am not——

Chairman ANDREWS. Okay.

Mr. STAFFORD [continuing]. Aware of a specific study in terms of the costs, although——

Chairman ANDREWS. The second thing——

Mr. STAFFORD [continuing]. Both sides will actually——

Chairman ANDREWS. You are not aware. The second question I would ask is—I admire your concern about the impact of any laws on volunteer firefighters. I think volunteers save taxpayers enormous amounts of money around the country and are every bit as professional as paid people, and I am a big supporter of theirs.

My understanding is the National Volunteer Fire Council has not taken a position on this bill, that it does not oppose this bill. Am I wrong?

Mr. STAFFORD. I believe that is correct.

Chairman ANDREWS. And my further understanding is that—and they have not spoken officially on this but—the section of the bill that you make reference to they actually supported inclusion in the Senate bill the last time this was done, and it has now been added to the House bill. Am I right about that?

Mr. STAFFORD. That is correct.

Chairman ANDREWS. Okay.

Mayor, I wanted to ask you a question. In the absence of data about the cost to government and unionization of police and fire—first of all, thank you for doing one of the hardest jobs in American politics.

Mr. SMITH. Thank you.

Chairman ANDREWS. When I go to the supermarket on the weekend to buy food, I get asked about health care bill, or the national debt, or the war in Afghanistan, but no one ever asks me to—why the leaves didn't get picked up the day after I put them out at the curb or, you know, why the police took 8 minutes to get there instead of 4.

And I realize that you have a very, very thankless job, and we appreciate you for doing it.

My understanding is that your budget in your community is lower in 2010 than it was in 2007, is that right?

Mr. SMITH. Yes, sir.

Chairman ANDREWS. We could probably take some pointers on how you did that. That would be a good thing for us to do around here. But it is my understanding also that you have unionized public safety personnel. Is it police and fire, or is it——

Mr. SMITH. Yes, sir.

Chairman ANDREWS. Police and fire. And I also understand that you were able to achieve higher levels of contribution from your police and fire to their health care costs.

Mr. SMITH. Yes, sir, through negotiation.

Chairman ANDREWS. Were those easy negotiations?

Mr. SMITH. Well, with every negotiation, there are two sides to start with, but I am very happy to say that with good heads in Lancaster we are able to come together and figure out where the best road to go together is.

Often times, we can lean in one direction or the other, depending on which party it is and the economic times. Here the last couple years, we have had a lot of difficulties, and we have had a lot of support by the FOP and the IAFF to get done, as you pointed out, how do we get by with a lower budget.

Chairman ANDREWS. What would you say the number one driver is in—for costs for you? You know, the number one thing you have got to fight to keep your budget under control each year—what is it?

Mr. SMITH. Declining revenues. About 60 percent of our revenue comes from income tax, and we are okay in that regard.

Chairman ANDREWS. Yes.

Mr. SMITH. But we do have lower interest rates being paid on our public funds, which used to be several millions of dollars, and now it is about $500,000.

And one of the other elements that we are very concerned about in Ohio is something called local government funds. It comes off of the sales tax. It comes back to the local governments.

The state has its own budgetary problems, and we are understanding that that will be revised in the next—budget and that will probably reduce our income by about $1.6 million.

And as you point out, we have lowered our budget to the point where we are just being able to provide the services we need to.

Chairman ANDREWS. Yes. I would think in real dollars what that means is you are operating 20 percent lower than you were in 2007, maybe 15 percent smaller——

Mr. SMITH. Yes.

Chairman ANDREWS [continuing]. Smaller government at that point.

Mr. SMITH. Yes.

Chairman ANDREWS. In your opinion, if tomorrow morning your police and fire were not unionized, would it make any different in your budget at all?

Mr. SMITH. Well, we obviously have contractual obligations, but I don't think it would take away the communication that we have

between us, the FOP and the IAFF, on what job needs to be done and how we try to work the budget to make sure that we have the right personnel and the right equipment.

Chairman ANDREWS. Well, again, we appreciate your service as a mayor.

And I would note for the record that you are a Republican mayor. By the way, I don't think there is any such thing as a Republican fire truck or a Democratic snow storm. At the local level, you just pick up the trash and pay the services.

But I would note that Mr. Kildee's bill, which was substantially similar to what is before us now, passed this committee by a 42-1 margin when it was considered a couple of years ago and got nearly 100 Republican members to vote for it on the House floor.

So I think this is an excellent example of bipartisanship that we hope will continue on.

Dr. Roe is here, and I would yield to him for questions.

Mr. ROE. Thank you, Mr. Chairman.

My last political job before I got here, too, was a mayor, and worked as—in Johnson City, Tennessee, which is the largest city in our district.

And as you know, Tennessee is a right-to-work state, and I want to say to you all—I haven't had a chance to hear the rest of the testimony because I have been in another—in the V.A. hearing, but I can't thank the police department and fire department, EMS, the public safety officers enough for what they do each and every day.

We have some issues about supporting—at least I have some issues about supporting this particular type of bill, and I would like to ask Mr. Stafford—and I know, Mayor, you stated that you had an income tax. We don't have that in Tennessee. We have only property taxes and sales taxes.

And as you can imagine, in the economic downturn we are in, it is a real issue to balance budgets. And as Chairman Andrews said, one of the things I have had problems getting adjusted to up here is the partisanship, because a pothole is a pothole, and the school is the school, and we didn't run as a partisan—I mean, you didn't run as a Democrat or Republican. You just ran in my city. So it was totally nonpartisan.

Mr. Stafford, if you would—I know you are with the National Right to Work Committee. I didn't hear your testimony, but could you tell me a little about your feelings on this particular bill as far as cities are concerned?

Mr. STAFFORD. Sure. I think it is clear that just by the fact of some of the testimony we have heard that people are looking to raise the cost of the services to the government. That is fine. That is certainly the right of anybody that is a worker, to try to figure that out for themselves how to get more.

But the fact that Congress should impose this—Mr. Roe, you were a mayor of Johnson City and you know, we have a mayor here from Ohio, and I quoted a mayor from Pennsylvania in my testimony, and I am sure the mayor of Vallejo, California would have something to say.

And you might get six different opinions and so—if you talk to these six different mayors on whether they wanted collective bar-

gaining, how much it cost, all those things, which is exactly why this bill shouldn't be passed.

Those mayors should have that right. Those mayors should have that power. And the state and local governments should be the ones making these decisions.

Mr. ROE. And I agree with you on that. The override of state law is what you are referring to right there.

Mr. STAFFORD. Absolutely.

Mr. ROE. Yes, I think there is no question—it is one thing—and I have said this to—our Tennessee Chiefs Association was in my office yesterday. For the fire and police, wherever they are, I think they don't make enough money. I believe that our teachers are not paid what they should be. So I totally agree with that.

The problem is where do we find the money. I mean, this year we have got at least a 5 percent cut. We don't have a printing press in Tennessee. We have a charter in our city. We have to balance the budget. We have an obligation in the state to balance the budget. It has to be done by law. So it places a real burden on local government.

And, Mr. Hankins, do you have any comments?

Mr. HANKINS. Dr. Roe, your city just missed being in my state of North Carolina.

Mr. ROE. I was in there—I was in your state Sunday.

Mr. HANKINS. Our elected officials, our city council members, county commissioners, some of whom are—were in the room, struggle to increase the salaries particularly of their law enforcement officers, firefighters, their public safety employees. They do value their service, as I said in my testimony.

They do that because it is right, because they often do pay and class studies to determine the value of those services so they can provide fair compensation and obviously so they can attract and retain good public employees, public safety and otherwise.

That goes on in my state in the absence of collective bargaining. And also, those elected officials and city managers are very mindful of fair employment policies, adequate training so employees can do their job safely and well.

And in our view it is just not appropriate, may not be constitutional, for the Congress to impose the federal mandate.

Mr. ROE. We had a PSO program—I am sure the chief is interested—the officer knows about that—where you are a fireman and a policeman together. And both the chiefs came to us and said, "This is not for the best interest of our citizens." And we made the decision, even though it cost the city—we had to hire more firemen and hire more policemen. It was the right thing to do.

And that is how that negotiation took place, and it was done in good faith from both sides. It worked great. The chiefs did a good job.

Mr. Chairman, I will close out.

And I want to thank the witnesses for being here, and certainly the police officers and the firemen for being here today.

Chairman ANDREWS. Thank you, Dr. Roe.

I am pleased to yield for any concluding comments to the ranking member of the subcommittee, Dr. Price.

Mr. PRICE. Thank you, Mr. Chairman. You weren't here at the beginning, and I neglected to recognize him, but Mayor Smith—his son has joined him today, who is an emergency medicine physician. I think he is in the back—if you want to just wave. He is here to figure out how the health care system works and——

Chairman ANDREWS. Well——

Mr. PRICE [continuing]. We could have a discussion about that——

Chairman ANDREWS [continuing]. We could learn a little bit from—is it Dr. Smith?

Mr. PRICE. We could. Yes, Dr. Smith.

Chairman ANDREWS. Welcome.

Mr. PRICE. Yes. Yes, we could learn—we ought to ask him, as a matter of fact. I suspect he would come up with the right answer.

Mr. Chairman, I want to thank you. I want to ask unanimous consent to include in the record for today's hearing the following statements, a statement from the National Sheriffs' Association dated March 9th; a letter from Michael R. Bloomberg, the mayor of New York City, opposing the bill, also dated March 9th; a joint statement from the International Public Management Association for Human Resources and the International Municipal Lawyers Association; and a CRS report number R40738, the Public Safety Employer-Employee Cooperation Act.

Chairman ANDREWS. Without objection.

[The information follows:]

NATIONAL SHERIFFS' ASSOCIATION,
March 9, 2010.

Hon. ROBERT ANDREWS, *Chairman;* Hon. TOM PRICE, *Ranking Member, Subcommittee on Health, Employment, Labor and Pensions, U.S. House of Representatives, 2181 Rayburn House Office Building, Washington, DC 20515.*

DEAR CHAIRMAN ANDREWS AND RANKING MEMBER PRICE: We thank you for allowing the National Sheriffs' Association (NSA) to submit this letter into the official record for the House Education and Labor Subcommittee on Health, Employment, Labor, and Pensions' hearing on "H.R. 413—Public Safety Employer-Employee Cooperation Act of 2009," held on March 10, 2010.

On behalf of the National Sheriffs' Association, I am writing to express our strong opposition to the Public Safety Employer-Employee Cooperation Act of 2009 (H.R. 413). The bill would mandate the federalization of public safety employees' collective bargaining at the state and local government levels.

H.R. 413 would essentially federalize state and local government labor-management relations, forcing sheriffs and peace officers to adhere to "one-size-fits-all" federally mandated labor-management guidelines. Moreover, the measure would supersede existing state and local collective bargaining agreements that is specifically tailored to the needs of its local jurisdiction.

Section 7 of the bill which states that existing state and local collective bargaining agreements would not be invalidated is misleading. The bill requires that these existing agreements would only be valid as long as they provide greater rights than those identified in the bill. Specifically, Section 4 of the bill states that public safety officers would be given the "right to bargain over hours, wages, and terms and conditions of employment." The right to bargain over "terms and conditions of employment" is overly broad, thus potentially invalidating any existing agreements that comply with specific state laws tailored to meet the needs of that state.

As you well know, the needs of law enforcement agencies vary depending on their size and locality. Therefore, collective bargaining agreements must reflect those different needs. H.R. 413 fails to make this distinction and does the law enforcement community a great disservice.

The proposed measure fails to recognize that each jurisdiction has unique needs and financial resources which influence how state and local governments approach their labor-management relations. To force sheriffs to follow federally mandated

labor-management guidelines impedes our ability to function most effectively and allocate valuable resources to providing law enforcement services to our citizens.

The burden that H.R. 413 places on public safety agencies is particularly troublesome given the current economic crisis when states and localities are grappling with serious budget shortfalls.

The provisions of H.R. 413 would force law enforcement to invest time, money and resources toward implementing and upholding collective-bargaining administration at the expense of public safety.

As one of the largest law enforcement organizations in the United States, I urge you to stand with the nation's sheriffs in opposing this ill-advised and unnecessary measure. We urge you to oppose the Public Safety Employer-Employee Cooperation Act of 2009 (H.R. 413) and allow the law enforcement community to maintain the ability to identify the best method of addressing labor-management relations in our own jurisdictions.

Respectfully Submitted,

SHERIFF JOHN E. ZARUBA, *President.*

New York, NY, March 9, 2010.

Hon. ROBERT ANDREWS, *Chairman;* Hon. TOM PRICE, *Ranking Member,*
Subcommittee on Health, Employment, Labor and Pensions, U.S. House of Representatives, 2181 Rayburn House Office Building, Washington, DC 20515.

Re: H.R. 413—Public Safety Employer-Employee Cooperation Act of 2009

DEAR CHAIRMAN ANDREWS AND REPRESENTATIVE PRICE: I am writing to express my serious concerns about legislation before your committee that could alter the current state of collective bargaining between the City of New York and a number of its unions. The legislation has the potential to harm both New York City and New York State labor relations.

As you are aware, the Public Safety Employer-Employee Cooperation Act of 2009, H.R. 413, is a bill that would significantly expand the jurisdiction of the Federal Labor Relations Authority ("FLRA") into the labor relations between state and local governments and their public safety officers. Though the bill may be well-intentioned, its fundamental problem, from the point of view of New York, is that it does not clearly distinguish states that have long provided a range of collective bargaining rights to their employees from states that have not.

For over forty years, the New York City Collective Bargaining Law and the New York State Public Employees' Fair Employment Act (also referred to as the Taylor Law) have provided a legal framework for public sector collective bargaining in the City of New York. Under H.R. 413, states like New York, with long histories of collective bargaining, face the risk of having their labor relations with public safety officers "federalized" and long-established bodies of law undermined.

One major problem with the bill is that it gives the FLRA the authority to decide what must be collectively bargained. New York has a long-standing legal precedent regarding what are mandatory, permissive, and prohibited subjects for collective bargaining. Under Section 4 of H.R. 413, this precedent could be overturned by the FLRA in the course of its decision whether the City "substantially provides" for the vaguely defined rights and responsibilities listed in Section 4(b). A notable example is that disciplinary procedures for police officers and firefighters, including due process, are provided for in the New York City Charter and Administrative Code and are prohibited subjects of bargaining. The New York Court of Appeals confirmed as recently as 2009 that these procedures may not be subjects of bargaining.

A decision by the Police Commissioner, for example, as to whether discipline should be brought against a police officer involved in a shooting incident, or the circumstances in which drug testing must be performed, is something for which he remains fully accountable to the public. It is of grave concern to the City that it could be forced to bargain over such procedures as a result of an improper finding—by the FLRA or a court—that the City did not "substantially provide" for the "rights and responsibilities" set forth in the law. As such, public accountability for the nation's largest municipal police force would be lost.

There are other significant concerns, which stem from the bill's troubling micromanagement of labor relations in ways that go beyond its broad purpose and that threaten to disrupt essential activities of public agencies in New York City and the nation. The bill does not sufficiently preserve state legislation concerning prevention of unlawful strikes, and confusingly prohibits "lockouts" by public employers of public safety employees, an unclear concept in the public arena.

In the final analysis, the bill could significantly affect the ability of the City of New York to ensure the safety of the public and the integrity of essential govern-

ment services and, at a minimum, is likely to involve the City in costly and disruptive litigation in federal court. Informal assurances that the bill is not intended to target unionized jurisdictions like the City of New York are not sufficient when the legislative text could improperly be read otherwise.

Given the serious concerns the proposed bill raises for the City of New York, I oppose the bill in its current form. Thank you for your consideration of this important matter.

Sincerely,

MICHAEL R. BLOOMBERG, *Mayor*.

Prepared Statement of the International Public Management Association for Human Resources (IPMA–HR) and the International Municipal Lawyers Association (IMLA)

This statement is submitted on behalf of the International Public Management Association for Human Resources (IPMA-HR) and the International Municipal Lawyers Association (IMLA) to express our concern with H.R. 413. Together IPMA-HR and IMLA represent millions of government employees. IPMA-HR is a professional association comprised of human resources practitioners in federal, state and local government. IMLA represents lawyers working in local government and local government organizations. Issues such as collective bargaining are of great importance to our members because they are at the forefront of implementing such laws as H.R. 413.

The associations are familiar with the Public Sector Employer-Employee Cooperation Act and we presented testimony in 2007. IPMA-HR and IMLA have a long history of working with public sector unions on issues of mutual concern and in promoting labor-management cooperation.

IPMA-HR and IMLA recognize the important role that public safety employees have in providing vital services to citizens on a routine basis as well as their role as first responders in the event of a terrorist attack or natural disaster. We are not opposed to collective bargaining at the state and local government level but firmly believe that state and local governments are in the best position to determine the nature and extent of collective bargaining rights. This is especially true in light of the poor economy and the fact that many states and localities are in the process of determining which services to cut and which employees to layoff. Adding an unfunded mandate in this tough economic environment is likely to exacerbate an already difficult situation.

We do not believe a federal "one size fits all" solution will improve the working conditions or the services provided by firefighters, police and emergency medical personnel, all of which are conducted in accordance with unique local conditions, governmental structures and revenue systems. We also believe that the proposed legislation raises serious constitutional issues.

Now is Not the Time to Further Burden State and Local Budgets

The National Conference of State Legislatures (NCSL) State Budget Update: November 2009 found that the impact of the recession is far from over for state governments. Budget gaps are expected to extend into 2011 and beyond. According to the report, "State lawmakers closed a cumulative budget gap of $145.9 billion in their FY 2010 budgets. This was on top of the gaps they closed in FY 2009 and for many, the ones they faced in FY 2008. Now, midway through FY 2010 for most states, new gaps have opened. And that will not be the end of it. The longest economic downturn in decades appears to be well entrenched and is manifesting itself in multiyear budget shortfalls. Many states already foresee budget gaps in FY 2011 and FY 2012. It is hard to see when they will end."

The Sixth Annual IPMA-HR Annual Hiring Outlook survey conducted in January 2010 found that thirty-two percent of respondents are anticipating layoffs this year compared to 30 percent in 2009. These numbers are nearly double what they were pre-recession.

Given the poor state of the economy adding a federal mandate does not make sense. State and local governments are in the position of cutting services and personnel. Spending money on administering collective bargaining will only add to the financial woes.

While the Congressional Budget Office (CBO) has not been able to estimate the financial impact on state and local governments, see CBO report on H.R. 980 in the 110th Congress: *http://www.cbo.gov/ftpdocs/82xx/doc8277/hr980.pdf* it seems clear that states and localities will incur costs.

For those states without bargaining, whole new departments will need to be created as well as the procedure for implementing the bargaining and handling grievances. Even in states with bargaining they will have to spend valuable time and resources analyzing the federal law and determining whether or not they are in compliance. For many states, even those with some type of bargaining such as Maryland, changes will need to be made to state laws and functions. Paul Krugman, economist and New York Times columnist wrote in his book, The Conscience of a Liberal, that unionization results in higher wages for those within and outside the union. Increased wages will only further burden state and local governments that will be forced to choose between reducing services and raising taxes.

Federalizing Collective Bargaining Is No Guarantee of "Cooperation"

The introduction to H.R. 413 includes a list of findings and a declaration of purpose. The first finding states that, "Labor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. In many public safety agencies it is the union that provides the institutional stability as elected leaders and appointees come and go."

While fostering labor management relationships is a noble goal, it is unlikely that federalizing collective bargaining will achieve it. Oftentimes even where collective bargaining rights are well established, the relationship is not characterized by trust and open communication and it is unclear how giving the Federal Labor Relations Authority (FLRA) authority over state and local government collective bargaining is designed to achieve this goal.

For many years IPMA-HR worked with employer associations and public sector unions as part of the Public Sector Labor-Management Committee. The Committee was established to promote public sector labor-management cooperation. As a member of the group's steering committee, IPMA-HR encouraged labor-management cooperation in the public sector and while there are many examples of successes, compared to the large number of jurisdictions—87,000 units of local government and 50 states—it was anything but a common practice.

And, anecdotal research reveals that successful partnerships are often based on personalities and not on the presence of collective bargaining. Contentious labor-management relations are a fact of life in many public sector organizations. While there is shared responsibility for this, we question the assumption underlying this legislation that federalizing these basic local government functions is the only way to achieve labor-management cooperation and harmonious relations.

A recent situation in St. Paul, Minnesota is instructive. Collective bargaining has been in place for many years but the situation between the fire chief and the firefighters union is described as "acrimonious." In March 2007, the results of an audit were released that detailed the situation in the St. Paul Department of Fire and Safety Services (SPDFSS) which includes both fire and EMS personnel. The audit is available online at: *http://www.stpaul.gov/fireaudit/*.

The audit states: Organizationally, the SPDFSS is in a state of internal crisis. The problems have not yet affected delivery of service to the public but could easily do so if not addressed. Most of the internal tension is between the fire chief and the firefighters union (Local 21). A 2005 survey conducted by the union determined that a majority of its members were critical of the Department's direction. The absence of trust between firefighters and the fire administration is a key factor affecting poor relations between labor and management.

The 305-page document describes just how bad the situation is: "The fire chief antagonizes the union by issuing orders that are an attempt perceived as to show his power. In response, the union encourages members to file grievances, contacts politicians about minor issues, and initiates legal actions that cost the city valuable staff time and money." There is nothing in the proposed legislation or in the mandating of federally supervised collective bargaining which would alleviate this situation.

The Law is Unnecessary Because States and Localities Already Have Bargaining Rights in Most Instances

State and local governments are in the best position to determine collective bargaining rights. The underlying assumption of H.R. 413 is that a federally-mandated collective bargaining law is necessary to ensure the rights of police officers, firefighters and emergency medical services personnel. But, the facts show that state and local governments are capable of establishing collective bargaining rights and in fact have done so in the majority of states. Where collective bargaining is not formal, public safety personnel often negotiate through associations. In addition, public safety employees, unlike their private sector counterparts, are protected by

due process rights in the Constitution and are covered under existing civil service laws.

According to the Bureau of Labor Statistics report for 2009, union membership in the public sector was substantially higher than in the private sector, with 43.3 percent of local government employees belonging to a union. This group includes workers in heavily unionized occupations, such as teachers, police officers, and fire fighters.

By comparison, the rate of unionization in the private sector is 7.2 percent.

According to the Government Accountability Office report on Collective Bargaining Rights: Information on the Number of Workers with and without Bargaining Rights, September 2002, 26 states and the District of Columbia have laws that provide collective bargaining rights to essentially all public employees. Another 12 states have laws that provide bargaining rights to specific groups of workers. Texas prohibits collective bargaining for most public employees but allows police and fire bargaining in jurisdictions with approval from a majority of voters.

Even in the 11 states that do not have collective bargaining laws, most if not all have associations. Many localities within those states may also have their own associations or collective bargaining arrangements. A quick Internet search revealed firefighter associations in all 12 states and many localities within those states. In Little Rock, Arkansas, where there is no state collective bargaining law, the city has bargaining agreements with more than three-fourths of their employees; this has been the case for the past 20 years.

The facts show that states and localities are capable of creating collective bargaining rights consistent with their own laws and government structures, including state constitutions, and that public safety officers are capable of forming unions and associations in the absence of federal legislation.

Federal Preemption of State and Local Laws Will be Confusing and Will Take Away State and Local Government's Ability to Best Allocate Resources

H.R. 413, as written, would give substantial authority to the FLRA over public sector collective bargaining. The FLRA would be tasked with deciding whether or not state laws meet federal requirements and to create regulations to govern the process if the FLRA determines that the state law is inadequate.

We also question whether the FLRA has the knowledge and capacity to manage collective bargaining for multiple state and local governments. The FLRA is a beleaguered agency as evidenced by the 2009 Best Places to Work rankings of federal agencies that was produced by the Partnership for Public Service and the American University Institute for the Study of Public Policy Implementation and ranked the FLRA last among the small federal agencies based on employee satisfaction and commitment.

Although supporters of H.R. 413 have said that the bill would have a minimal impact on state and local government collective bargaining, it is not at all clear from the way the bill is written. For instance, the bill requires states to provide for bargaining over hours, wages and terms and conditions of employment. Hours and wages are regulated now by a variety of federal, state, and local laws and require coordination, at the very least, with revenue authority. "Terms and conditions of employment" is even less clear. Does it include the type of safety gear, minimum staffing standards, or something else?

In Oregon, the state legislature had a contentious debate over whether or not minimum staffing levels and overtime could be included in collective bargaining. The result is that in 2008, those issues will be included in collective bargaining if they have an impact on on-the-job safety (or a significant impact in the case of minimum staffing levels). This was one of the most hotly debated issues in the legislature and individuals, associations, and firefighters weighed in. The fact that the Oregon legislature reached a compromise is significant for two reasons.

First, it argues against the need for H.R. 413 at all. Firefighters in Oregon did not need any federal legislation to resolve an issue and the state was able to reach a successful compromise. Second, to the extent the compromise took into consideration the allocation of scarce local resources and allowed Oregon to consider the successes and failures in other states it would seem best to leave such important decision making to the states and localities that will have to live with and fund the consequences.

Mandating all collective bargaining here in Washington, D.C. may not be the best answer. What firefighters, police and emergency medical services personnel need in Louisiana is likely to differ greatly from New York, as will the states' available resources to pay for and fund their public safety departments. And, federalizing collective bargaining by establishing uniform, national standards could have the impact of being less efficient and effective than state and local laws.

For instance, Montgomery County, Maryland has longstanding collective bargaining relationships and has fostered a spirit of partnership with labor unions representing its public safety employees according to Joe Adler, director of the Office of Human Resources, Montgomery County. In the county, unfair labor practice issues and negotiability issues are resolved by the county's permanent umpire/labor relations administrator sometimes within days and generally within a few weeks. Mr. Adler notes that in the federal sector it has taken the FLRA sometimes years to issue decisions in certain unfair labor practice cases. Should H.R. 413 change the impasse resolution mechanism in Maryland and in other jurisdictions like it, it may not be an improvement.

Although bill supporters have argued that the cost will be minimal, that is not certain. State and local governments, at a minimum, will have to hire additional personnel to ensure that their laws meet federal standards, and the costs could be enormous if state and local governments can no longer make the decisions of how to best allocate scarce resources. If the result of collective bargaining requires hiring more staff or purchasing more equipment, this will require a great deal of money and to that extent is an unfunded mandate. Furthermore, H.R. 413 is unclear on the issue of volunteer fire departments. Will they be covered? If so, this will be an additional cost and unfunded mandate on state and local governments.

If this legislation is enacted into law, how will the Congress respond when the unions representing teachers and other public sector occupations request similar legislation? Does the Congress intend to have the federal government mandate collective bargaining and establish federal standards that would apply throughout state and local government?

H.R. 413 Raises Serious Constitutional Issues

Finally, H.R. 413 raises serious Constitutional concerns. These issues were raised during the 2000 hearing on the same bill and we believe they deserve your consideration today. The Supreme Court has issued several opinions during the last decade that call into question the power of Congress to subject state and local governments to federal regulation.

The Supreme Court has in recent years limited the authority of Congress to pass laws abrogating states' immunity from lawsuits. In the case Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), the Court ruled that the Commerce Clause does not give Congress the authority to abrogate a state's Eleventh Amendment immunity to suit. Subsequent Supreme Court decisions have found states immune from suit under employment-related laws such as the Fair Labor Standards Act (FLSA), in Alden v. Maine, 527 U.S. 706 (1999), and the Americans with Disabilities Act (ADA) in Board of Trustees of the University of Alabama et al. v. Garrett et al., 531 U.S. 356, 369 (2001).

Other Supreme Court opinions call into question the authority of Congress to pass laws affecting state and local activity. In U.S. v. Lopez, 514 U.S. 549 (1995), the Court found Congress exceeded its authority under the Commerce Clause in passing the Gun-Free School Zones Act of 1990, and in the case Flores v. City of Boerne, 521 U.S. 507 (1997), the Court found that Congress exceeded its power under Section 5 of the Fourteenth Amendment in passing the Religious Freedom Restoration Act (RFRA). Congress's authority to enact H.R. 413 is highly questionable.

For the reasons contained in this testimony, we would urge the Subcommittee not to mandate collective bargaining for public safety employees. IPMA-HR and IMLA appreciate the opportunity to present our concerns with H.R. 413.

About the Associations:

INTERNATIONAL PUBLIC MANAGEMENT ASSOCIATION FOR HUMAN RESOURCES

IPMA-HR is a nonprofit organization that represents the interests of human resource professionals at the Federal, State and Local levels of government. IPMA-HR members include all levels of public sector HR professionals. Our goal is to provide information and assistance to help HR professionals increase their job performance and overall agency function by providing cost effective products, services and educational opportunities.

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

IMLA is a nonprofit, nonpartisan professional organization consisting of more than 1,400 members in the United States and Canada. Its membership is comprised of local government entities, including cities and counties, and subdivisions thereof (as represented by their chief legal officers), state municipal leagues, and individual attorneys. IMLA is the oldest and largest association of attorneys representing municipalities, counties, special districts and other local government interest entities.

Since its establishment in 1935, IMLA has advocated for the rights of local governments and the attorneys who represent them through its Legal Advocacy Program and its Legislative Advocacy Program.

[June 21, 2010, Congressional Research Service]

The Public Safety Employer-Employee Cooperation Act

JON O. SHIMABUKURO, *Legislative Attorney;* GERALD MAYER, *Analyst in Labor Policy*

Since 1995, legislation that would guarantee collective bargaining rights for state and local public safety officers has been introduced in Congress.[1] The Public Safety Employer-Employee Cooperation Act (PSEECA)—introduced in the 111th Congress as H.R. 413 by Representative Dale E. Kildee, S. 1611 by Senator Judd Gregg, and S. 3194 by Senator Harry Reid—would recognize such rights by requiring compliance with federal regulations and procedures if these rights are not provided under state law.[2] Supporters of the measure maintain that strong partnerships between public safety officers and the cities and states they serve are not only vital to public safety, but are built on bargaining relationships.[3] This report reviews the PSEECA and discusses the possible impact of the legislation. The report also identifies existing state laws that recognize collective bargaining rights for public safety employees, and considers the constitutional concerns raised by the measure.

Under the PSEECA, the Federal Labor Relations Authority (FLRA) would be required to determine whether a state (substantially provides) for specified labor-management rights within 180 days of the measures enactment.[4] If the FLRA determines that a state does not substantially provide for such rights, the state would be subject to regulations and procedures prescribed by the FLRA. The FLRA's regulations and procedures would be consistent with the labor-management rights identified in the PSEECA. These rights include

- granting public safety officers the right to form and join a labor organization that is, or seeks to be, recognized as the exclusive bargaining representative of such employees;
- requiring public safety employers to recognize the employees (labor organization freely chosen by a majority of the employees), to agree to bargain with the labor organization, and to commit any agreements to writing in a contract or memorandum of understanding;
- providing for bargaining over hours, wages, and terms and conditions of employment;
- making available an interest impasse resolution mechanism, such as fact-finding, mediation, arbitration, or comparable procedures; and
- requiring the enforcement of all rights, responsibilities, and protections provided by state law and any written contract or memorandum of understanding in state courts.[5]

The FLRA would have one year from the date of enactment of the PSEECA to issue regulations that establish these rights for public safety officers in states that do not substantially provide them.[6] The new regulations would become applicable in noncomplying states either two years after the date of enactment of the PSEECA or on the date of the end of the first regular session of the state's legislature that begins after the date of enactment of the PSEECA, whichever is later.[7]

The PSEECA defines the term (public safety officer) to include law enforcement officers, firefighters, and emergency medical services personnel.[8] An (employer), for purposes of the act, includes any state, political subdivision of a state, the District of Columbia, and any territory or possession of the United States that employs public safety officers.[9] A political subdivision of a state that has a population of less than 5,000 or that employs fewer than 25 full time employees, however, may be exempted from the act's requirements.[10]

The Public Safety Employer-Employee Cooperation Act and the Commerce Clause

The sponsors of the PSEECA appear to rely on the Commerce Clause of the U.S. Constitution for the authority to enact the measure.[11] Section 2(5) of the PSEECA states,

The potential absence of adequate cooperation between public safety employers and employees has implications for the security of employees, impacts the upgrading of police and fire services of local communities, the health and well-being of public safety officers, and the morale of the fire and police departments, and can affect interstate and intrastate commerce.

During the 110th Congress, the House Committee on Education and Labor further observed that there is "little question that public safety employees [sic] and their role in homeland security affects interstate commerce. * * * The economic impact

of terrorism and natural disasters is not limited to the locality where these events occur. Rather, such events have regional and economic impacts for which the federal government must be responsive."[12]

Whether the Commerce Clause provides sufficient authority to support the PSEECA, however, may not be entirely certain. Although the U.S. Supreme Court has found that the Fair Labor Standards Act, a statute enacted pursuant to Congress's authority under the Commerce Clause, can be applied to employees of a public mass-transit authority,[13] more 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.

In United States v. Lopez, a 1995 case involving the Gun-Free School Zones Act of 1990 and Congress's authority under the Commerce Clause, the Court identified three broad categories of activity that Congress may regulate pursuant to its commerce power:

First, Congress may regulate the use of channels of interstate commerce. * * * Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. * * * Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce * * * i.e., those activities that substantially affect interstate commerce.[14]

The Lopez Court concluded that the act, which prohibited any individual from possessing a firearm at a place the individual knew or had reasonable cause to believe was a school zone, exceeded Congress's authority under the Commerce Clause because the possession of a gun in a local school zone did not have a substantial effect on interstate commerce. The Court maintained that upholding the act would require the Court to "pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States."[15]

Similarly, in United States v. Morrison, a 2000 case involving Congress's commerce power and a section of the Violence Against Women Act, the Court found that Congress exceeded its authority because gender-motivated crimes of violence occurring within a state have no substantial effect on interstate commerce.[16] The Court maintained that its cases upholding federal regulation of intrastate activity all involve activity that reflects some form of economic endeavor.[17] The Court noted that the regulation and punishment of intrastate violence that is "not directed at the instrumentalities, channels, or goods involved in interstate commerce has [sic] always been the province of the States."[18]

Most recently, in Gonzales v. Raich, the Court upheld the Controlled Substances Act (CSA) as a valid exercise of Congress's commerce authority.[19] The CSA was challenged by two users of medical marijuana that was locally grown and prescribed in accordance with California law. They argued that Congress lacked the authority to prohibit the intrastate manufacture and possession of marijuana for medical purposes.

Citing its decision in Wickard v. Filburn, a 1942 case that recognized Congress's authority under the Commerce Clause to regulate intrastate activities, the Court reiterated that even if an activity is "local and * * * may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce."[20] The Court maintained that the production of a commodity has a substantial effect on supply and demand in the national market for that commodity, and observed that there was a likelihood that the high demand in the interstate market would draw marijuana grown for home consumption into that market.[21]

The Court distinguished Raich from Lopez and Morrison by noting that the CSA, unlike the Gun-Free School Zones Act and the Violence Against Women Act, regulates activities that are "quintessentially economic."[22] The Court indicated that "[t]he CSA is a statute that regulates the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market. Prohibiting the interstate possession or manufacture of an article of commerce is a rational (and commonly utilized) means of regulating commerce in that product."[23]

While the PSEECA would not seem to regulate the channels or instrumentalities of interstate commerce, it has been argued that it would regulate an activity that substantially affects interstate commerce. By "improving the cohesiveness and effectiveness of public safety employers and their employees," it is believed that the PSEECA would minimize the costs associated with terrorism and natural disasters.[24] During the 110th Congress, the House Committee on Education and Labor noted, "The economic impact of terrorism and natural disasters is not limited to the

locality where these events occur. Rather, such events have regional and national economic impacts for which the federal government must be responsive."[25]

Some maintain, however, that public safety employment is not an economic activity that may be regulated pursuant to Congress's commerce authority. In light of the Court's decisions in Lopez, Morrison, and Raich, it has been argued that police work, firefighting, and emergency medical services are not economic enterprises or activities related to commercial transactions.[26] Rather, such duties are public services provided by states and localities to their citizens.[27] Moreover, the PSEECA would not be regulating the production, distribution, or consumption of a commodity for which there is an interstate market by requiring collective bargaining rights for public safety officers.[28]

While the PSEECA would seem to raise questions involving Congress's authority under the Commerce Clause, it does not appear to present concerns over the commandeering of state or local regulatory processes in violation of the Tenth Amendment.[29] In New York v. United States, a 1992 case involving a federal requirement that gave states a choice between taking title to radioactive waste or regulating in accordance with congressional directives, the Court indicated that "Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'"[30]

Unlike the provision at issue in New York, the PSEECA would not seem to direct states to legislate collective bargaining for public safety officers. Instead, states would be given the option of either enacting legislation that satisfies the federal standards or becoming subject to the FLRA's regulations. One might also contend that the measure does not appear to require state or local governments to implement a federal regulatory program. Rather, a federal collective bargaining scheme for public safety officers would be implemented by the FLRA only if a state chose not to enact a program of its own.[31]

Possible Impact of the Public Safety Employer-Employee Cooperation Act

The PSEECA has generated strong reactions from both the business and organized labor communities, with the former generally opposing the measure and the latter supporting it. Critics of the act emphasize the administrative and personnel costs that would likely be expended to comply with the measure. Because of the difficulty in predicting how many workers may organize or what terms and conditions would be negotiated, the cost of the measure for state and local governments was not estimated by the Congressional Budget Office (CBO) when earlier versions of the legislation were considered.

CBO did estimate, however, that the FLRA would need to spend an additional $3 million to develop regulations, to determine whether states were in compliance with the law, and to respond to judicial review of its determinations.[32] Indeed, some have maintained that the PSEECA could increase demands on the FLRA, either by stretching its resources or requiring new staff.[33] Although subsequent costs are difficult to predict because states may respond differently and, once given the right, public safety officers may or may not unionize, CBO estimated that the FLRA would spend about $10 million annually to administer the act.[34]

Opponents of the PSEECA have also argued that the measure could raise the cost of public safety because of potentially higher wages and benefits, as well as the cost of negotiating and administering collective bargaining agreements.[35]

Supporters of the PSEECA contend that the measure would give many public safety workers the right to organize and bargain collectively—rights that they may not currently have. The arguments in support of the act are generally based on what proponents maintain are the benefits of collective bargaining. For example, collective bargaining may improve the hours, pay, benefits, and working conditions of public safety workers. Higher pay and better working conditions may reduce turnover. Arguably, lower turnover could reduce the cost of hiring and training new workers.

Supporters also argue that the PSEECA would give workers a "voice" in the workplace. They maintain that unions provide workers an additional way to communicate with management. Instead of expressing their dissatisfaction by quitting, workers can use formal procedures to resolve issues relating to working conditions or other matters.[36] Thus, according to supporters, the PSEECA would give labor and management a way to work together to resolve differences. Therefore, supporters further maintain that, by improving labor-management relations, the measure would improve public safety.[37]

TABLE 1.—STATE PUBLIC SECTOR COLLECTIVE BARGAINING LAWS

State	Citation
Alabama	Ala. Code § 11-43-143(b): Provides state and municipal firefighters with the right to join a union and have proposals related to salaries and other conditions of employment presented by such union. Public officials cannot, however, be compelled to negotiate toward a labor contract. See Nichols v. Bolding, 277 So.2d 868 (Ala. 1973). No similar statute with regard to other public safety officers.
Alaska	Alaska Stat. § 23.40.070: Recognizes collective bargaining rights for all public employees.
Arizona	Ariz. Rev. Stat. § 23-1411: Provides public safety officers with the right to join a union. Employee wage negotiations, however, cannot be compelled.
Arkansas	No public sector collective bargaining laws.
California	Cal. Gov't Code § 3502: Recognizes collective bargaining rights for municipal public employees. Cal. Gov't Code § 3515: Recognizes collective bargaining rights for state public employees.
Colorado	No public sector collective bargaining laws.
Connecticut	Conn. Gen. Stat. § 5-271: Recognizes collective bargaining rights for state public employees. Conn. Gen. Stat. § 7-468: Recognizes collective bargaining rights for municipal public employees.
Delaware	Del. Code Ann. tit. 19, § 1303: Recognizes collective bargaining rights for all public employees. Del. Code Ann. tit. 19, § 1603: Recognizes collective bargaining rights for police officers and firefighters.District of ColumbiaD.C. Code § 1-617.06: Recognizes collective bargaining rights for all public employees.
Florida	Fla. Stat. § 447.301: Recognizes collective bargaining rights for all public employees.
Georgia	Ga. Code Ann. § 25-5-4: Recognizes collective bargaining rights for local firefighters if a municipality of 20,000 or more authorizes such rights by local ordinance. No similar statute with regard to other public safety officers.
Hawaii	Haw. Rev. Stat. § 89-3: Recognizes collective bargaining rights for all public employees.
Idaho	Idaho Code Ann. § 44-1802: Recognizes collective bargaining rights for municipal firefighters. No similar statute with regard to other public safety officers.
Illinois	5 Ill. Comp. Stat. 315/6: Recognizes collective bargaining rights for all public employees.
Indiana	No collective bargaining laws for public safety officers.
Iowa	Iowa Code § 20.8: Recognizes collective bargaining rights for all public employees.
Kansas	Kan. Stat. Ann. § 75-4324: Recognizes collective bargaining rights for state public employees. Kan. Stat. Ann. § 75-4321(c): The governing body of any municipal employer may recognize collective bargaining rights for its employees by a majority vote of its members.
Kentucky	Ky. Rev. Stat. Ann. § 67A.6902: Recognizes collective bargaining rights for police officers and firefighters employed by an urban-county government. Ky. Rev. Stat. Ann. § 67C.402: Recognizes collective bargaining rights for police officers employed by a consolidated municipal government. Ky. Rev. Stat. Ann. § 345.030: Recognizes collective bargaining rights for municipal firefighters in cities with more than 300,000 residents. Ky. Rev. Stat. Ann. § 74.470: Recognizes collective bargaining rights for municipal police officers in counties with more than 300,000 residents.
Louisiana	No public sector collective bargaining laws.
Maine	Me. Rev. Stat. Ann. tit. 26, § 963: Recognizes collective bargaining rights for municipal public employees. Me. Rev. Stat. Ann. tit. 26, § 979-B: Recognizes collective bargaining rights for state public employees.

TABLE 1.—STATE PUBLIC SECTOR COLLECTIVE BARGAINING LAWS—Continued

State	Citation
Maryland	Md. Ann. Code art. 28, § 5-114.1: Recognizes collective bargaining rights for Maryland-National Capital Park and Planning Commission police officers. No similar statute with regard to other public safety officers.
Massachusetts	Mass. Gen. Laws ch. 150E, § 2: Recognizes collective bargaining rights for all public employees.
Michigan	Mich. Comp. Laws § 423.209: Recognizes collective bargaining rights for all public employees.
Minnesota	Minn. Stat. § 179A.06: Recognizes collective bargaining rights for all public employees.
Mississippi	No public sector collective bargaining laws.
Missouri	Mo. Rev. Stat. §§ 105.510, 105.520: Provides public employees, except police, deputy sheriffs, Missouri state highway patrolmen, and other specified individuals, with the right to join a union and have proposals related to salaries and other conditions of employment presented by such union. Public bodies are required to discuss such proposals, but cannot be compelled to agree to them. See Null v. City of Grandview, 669 S.W.2d 78 (Mo. App. W.D. 1984).
Montana	Mont. Code Ann. § 39-31-201: Recognizes collective bargaining rights for all public employees.
Nebraska	Neb. Rev. Stat. § 48-837: Recognizes collective bargaining rights for all public employees. See also Neb. Rev. Stat. § 81-1370 (recognizing collective bargaining rights for state public employees).
Nevada	Nev. Rev. Stat. § 288.140: Recognizes collective bargaining rights for local public employees.
New Hampshire	N.H. Rev. Stat. § 273-A:9: Recognizes collective bargaining rights for all public employees.
New Jersey	N.J. Stat. Ann. § 34:13A-5.3: Recognizes collective bargaining rights for all public employees.
New Mexico	N.M. Stat. § 10-7E-5: Recognizes collective bargaining rights for all public employees.
New York	N.Y. Civ. Serv. Law § 203: Recognizes collective bargaining rights for all public employees.
North Carolina	N.C. Gen. Stat. § 95-98: Renders any agreement or contract between a public employer and a union to be against public policy and void.
North Dakota	No public sector collective bargaining laws.
Ohio	Ohio Rev. Code Ann. § 4117.03: Recognizes collective bargaining rights for all public employees.
Oklahoma	Okla. Stat. tit. 11, § 51-103: Recognizes collective bargaining rights for local firefighters and police officers.
Oregon	Or. Rev. Stat. § 243.662: Recognizes collective bargaining rights for all public employees.
Pennsylvania	43 Pa. Cons. Stat. § 217.1: Recognizes collective bargaining rights for state and municipal police and firefighters. 43 Pa. Cons. Stat. § 1101.301: Recognizes collective bargaining rights for all public employees.
Rhode Island	R.I. Gen. Laws § 28-9.1-4: Recognizes collective bargaining rights for municipal firefighters. R.I. Gen. Laws § 28-9.2-4: Recognizes collective bargaining rights for municipal police officers. R.I. Gen. Laws § 28-9.5-4: Recognizes collective bargaining rights for state police officers. R.I. Gen. Laws § 36-11-1: Recognizes collective bargaining rights for state public employees, including members of the department of state police below the rank of lieutenant.
South Carolina	No public sector collective bargaining laws.
South Dakota	S.D. Codified Laws § 3-18-2: Recognizes collective bargaining rights for all public employees.
Tennessee	Tenn. Code Ann. § 49-5-603: Recognizes collective bargaining rights for only licensed employees of any local board of education.

TABLE 1.—STATE PUBLIC SECTOR COLLECTIVE BARGAINING LAWS—Continued

State	Citation
Texas	Tex. Loc. Gov't Code Ann. § 174.023: Collective bargaining rights for municipal firefighters and police officers are available upon adoption of the Fire and Police Employee Relations Act by majority vote in an election.
Utah	Utah Code Ann. § 34-20a-3: Recognizes collective bargaining rights for municipal firefighters.
Vermont	Vt. Stat. Ann. tit. 3, § 903: Recognizes collective bargaining rights for state public employees. Vt. Stat. Ann. tit. 22, § 1721: Recognizes collective bargaining rights for municipal public employees.
Virginia	Va. Code Ann. § 40.1-57.2: Prohibits state and municipal employers from recognizing any union as a bargaining agent for any public employees, and prohibits the execution of a collective bargaining agreement with any such union.
Washington	Wash. Rev. Code § 41.56.040: Recognizes collective bargaining rights for all public employees.
West Virginia	No public sector collective bargaining laws.
Wisconsin	Wis. Stat. § 111.70: Recognizes collective bargaining rights for municipal public employees. Wis. Stat. § 111.82: Recognizes collective bargaining rights for state public employees.
Wyoming	Wyo. Stat. Ann. § 27-10-102: Recognizes collective bargaining rights for municipal firefighters.

Note: This table should not be interpreted as providing a determination of whether a state substantially provides the rights prescribed by the Public Safety Employer-Employee Cooperation Act. The table simply identifies whether a state's public safety officers have the right to engage in collective bargaining.

ENDNOTES

[1] S. 3194, 111th Cong. (2010); H.R. 413, 111th Cong. (2009); S. 1611, 111th Cong. (2009); H.R. 980, 110th Cong. (2007); S. 2123, 110th Cong. (2007); H.R. 1249, 109th Cong. (2005); S. 513, 109th Cong. (2005); H.R. 814, 108th Cong. (2003); S. 606, 108th Cong. (2003); H.R. 1475, 107th Cong. (2001); S. 952, 107th Cong. (2001); H.R. 1093, 106th Cong. (1999); S. 1016, 106th Cong. (1999); H.R. 1173, 105th Cong. (1997); H.R. 1484, 104th Cong. (1995).

[2] H.R. 413 was introduced on January 9, 2009, and was referred to the House Committee on Education and Labor. S. 1611 was introduced on August 6, 2009, and was referred to the Senate Committee on Health, Education, Labor, and Pensions. S. 3194 was introduced on April 12, 2010, and was placed on the Senate Legislative Calendar on April 13, 2010. On May 24, 2010, the Public Safety Employer-Employee Cooperation Act was offered as an amendment (S.Amdt. 4174) by Senator Reid to H.R. 4899, the Supplemental Appropriations Act, 2010. Senator Reid withdrew the amendment on May 27, 2010.

[3] See, e.g., 153 Cong. Rec. S?12382 (daily ed. Oct. 1, 2007) (statement of Sen. Kennedy (Studies show that cooperation between public safety employers and employees improves the quality of services communities receive and reduces worker fatalities.)).

[4] S. 3194, 111th Cong. (4(a)(1) (2010); H.R. 413, 111th Cong. (4(a)(1) (2009); S. 1611, 111th Cong. (4(a)(1) (2009). See H.R. 413, 111th Cong. § 3(10) (2009) (defining the term "substantially provides" to mean "substantial compliance with the rights and responsibilities described in section 4(b) [of the Public Safety Employer-Employee Cooperation Act]."); S. 3194, 111th Cong. (3(12) (2010) and S. 1611, 111th Cong. (3(12) (2009) (defining the term "substantially provides" to mean "compliance with each right and responsibility described in [section 4(b) of the Public Safety Employer-Employee Cooperation Act].").

[5] S. 3194, 111th Cong. (4(b) (2010); H.R. 413, 111th Cong. (4(b) (2009); S. 1611, 111th Cong. (4(b) (2009).

[6] S. 3194, 111th Cong. (5(a) (2010); H.R. 413, 111th Cong. (5(a) (2009); S. 1611, 111th Cong. (5(a) (2009).

[7] S. 3194, 111th Cong. (4(d)(1) (2010); H.R. 413, 111th Cong. (4(c)(2) (2009); S. 1611, 111th Cong. (4(d)(1) (2009). S. 3194 and S. 1611 further provide that a state receiving a subsequent determination of failing to substantially provide for the specified labor-management rights will become subject to the FLRA's regulations on the last day of the first regular session of the state's legislature that begins after the date of the FLRA's determination.

[8] S. 3194, 111th Cong. (3(10) (2010); H.R. 413, 111th Cong. (3(2) (2009); S. 1611, 111th Cong. (3(10) (2009).

[9] S. 3194, 111th Cong. ((3(4), (11) (2010); H.R. 413, 111th Cong. (3(8) (2009); S. 1611, 111th Cong. ((3(4), (11) (2009).

[10] S. 3194, 111th Cong. (8(a)(6) (2010); H.R. 413, 111th Cong. (8(b) (2009); S. 1611, 111th Cong. (8(a)(6) (2009).

[11] U.S. Const. art. I, (8, cl. 3.

[12] H.Rept. 110-232, at 18-19 (2007).

[13] See Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985).

[14] 514 U.S. 549, 558-59 (1995).

[15] Id. at 567.

[16] 529 U.S. 598 (2000).

[17] Id. at 611.
[18] Id. at 618.
[19] 545 U.S. 125 (2005).
[20] 317 U.S. 111, 125 (1942).
[21] Raich, 545 U.S. at 19.
[22] Id. at 25.
[23] Id. at 26.
[24] H.Rept. 110-232, at 19 (2007).
[25] Id.
[26] See Kevin J. O(Brien, Federal Regulation of State Employment Under the Commerce Clause and (National Defense(Powers: Constitutional Issues Presented by the Public Safety Employer-Employee Cooperation Act, 49 B.C. L. Rev. 1175 (2008).
[27] Id.
[28] Id.
[29] The Tenth Amendment of the U.S. Constitution states, (The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.(
[30] 505 U.S. 144, 161 (1992) (quoting Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S. 264, 288 (1981). See also Printz v. United States, 521 U.S. 898 (1997) (holding that Congress cannot circumvent New York's prohibition on compelling States to enact or enforce a federal regulatory program by conscripting State officers directly).
[31] See also H.Rept. 110-232, at 20 ("The Public Safety Employer-Employee Cooperation Act does not 'commandeer' state or local government by requiring that they enact or implement a federal regulatory program. The Act expressly places the onus on states that do not yet provide full collective bargaining rights for public sector employees to either provide the protections required in the Act, or to allow the FLRA to implement the Act.").
[32] Congressional Budget Office, S.? 952, Public Safety Employer-Employee Cooperation Act of 2001, Sept. 24, 2001, at 2.
[33] Testimony of David M. Smith, in Senate, Committee on Health, Education, Labor, and Pensions, Public Safety Employer-Employee Cooperation Act of 1999, at 2.
[34] Congressional Budget Office, supra note 32 at 2.
[35] Public Service Research Council, H.R.? 814/S.? 606, "The Public Safety Employer-Employee Cooperation Act," May 2003, available at *http://downloads.heartland.org/?12523.pdf.*
[36] Richard B. Freeman and James L. Medoff, "The Two Faces of Unionism," Public Interest, no. 57, Fall 1979, at 70-73; Richard B. Freeman, "The Exit-Voice Tradeoff in the Labor Market: Unionism, Job Tenure, Quits, and Separations," Quarterly Journal of Economics, vol. 94, Jun. 1980, at 644-45.
[37] Public Safety Employer-Employee Cooperation Act of 1999: Hearing Before the S. Comm. on Health, Educ., Lab., and Pensions, 106th Cong. 6-9 (2000) (statement of Frederick H. Nesbitt, Director of Governmental Affairs, Int'l Ass'n of Firefighters); Id. at 16-18 (statement of Sen. Kennedy, Member, Sen. Comm. on Health, Educ., Lab., and Pensions).

Mr. PRICE. And just a few comments to close. I want to just thank our witnesses again for their time and their expertise and sharing that with us today.

I want to again make certain that people appreciate that this isn't about the valiant service of the public safety officers and the firefighters across this land. As I mentioned, every single one of them are heroes. Many of them in my community are dear friends.

And as a physician who worked on the front lines of emergency service for a long, long time, I appreciate the great work that they do every single day.

And also, I am also struck by the fact that the comments from my friends on the other side of the aisle are often times—most times on this bill about the specifics of organizing, or the effect of organizing or, in fact, the success of organizing into a union situation to collectively bargain.

But this isn't about—this bill isn't about whether or not public safety officers, firefighters, ought to have the right to join unions or to collectively bargain. It is about where that decision is made. Should it be left to the states or should it be usurped by the federal government? That is what this question is about.

And under this bill, states have one of two choices. They can adopt state laws that comport with the federal requirements that we would put in place, or they face direct federal regulation. And I would suggest that is a very serious question.

So this isn't about the right or the ability of public safety officers or firefighters to organize or collectively bargain. It is about where that decision ought to be made.

And certainly now, over the last 14 months, we have seen remarkable change in the perspective of the federal government about what the role of the federal government ought to be. I would suggest that we ought to take this issue very, very seriously and that there are many across this land who are very concerned about what they see as the role of the federal government currently.

Thank you, Mr. Chairman.

Chairman ANDREWS. Thank you, Dr. Price.

I would yield for a moment to the author of the bill, Mr. Kildee, if he has any closing comments, before I wrap things up.

Mr. KILDEE. Well, I should thank you very much for your deep interest in this bill. This bill has been pending for quite some time. I feel and hope that this will be the year when we can go down to the White House and see a presidential pen on that bill.

Chairman ANDREWS. Hoping for a couple of them this year, Dale.

Mr. KILDEE. Yes, he uses several of them, I know. Bill Clinton used to,—the pen—have quite a few pens.

But this bill will improve the quality of life for everybody in these inner cities. I am convinced of that. I lived in a city all my life. I have never been a farm boy. I lived in a city. I live right near a fire hall. I visit my police station regularly.

And the good relations between the city government and the police and firefighters is a very essential element in the quality of life in a city. And I certainly appreciate you having this hearing today.

Chairman ANDREWS. Well, thank you.

Just reclaiming my time, I again want to thank the witnesses for their excellent preparation and adding to the committee's discourse and my colleagues.

I think that Mr.—Dr. Price, rather, raises a very serious question—at what level of government, under what circumstances, the decision should be made that would engender and empower the right for people to bargain collectively and organize.

And out of that question has grown a strong, substantial, bipartisan consensus—as I said, nearly 100 Republican House members in support, all but one of the members of this committee in support the last time around, Republican and Democratic elected officials. And sure, there are some on the other side.

But I think there is a strong consensus that when we call upon someone to protect our home because it has just been burglarized or to climb into our home when it is set afire to rescue a person you have never met, who means nothing to you in your personal life, that that person, no matter where he or she lives, ought to have the right, if they choose, to bargain collectively and organize.

And I think there is a broad and substantial consensus in support of that proposition. I think this bill very wisely addresses and honors the contribution of volunteers who serve us, particularly in the firefighting area. And I do think the time is here to go forward as we did in 2007.

With that, we are going to ask for unanimous consent for any further statements. All members will have 14—is it 14 business days? Okay, Mr. Sestak, I see, is here. If the other side will not

object, we will open up for 5 minutes of questions. No, that is okay. That is all right.

And so I can just complete that part of the script, how many business days do the members have to add their comments?

Voice. Fourteen.

Chairman ANDREWS. Fourteen business days. We will then conclude with Mr. Sestak's questioning, and then we will adjourn the hearing.

Joe, you are recognized for 5 minutes.

Mr. SESTAK. Thanks, Mr. Chairman. I apologize. I just came from the Armed Services Committee where I am so junior I was the last one to speak.

But instead of asking maybe a question, I will just make a short statement, then. I very much appreciate the first responders here. And the reason I wanted to come back—at least make up a statement—is I joined up during the Vietnam War and went out to the Navy. My first job was fire marshal.

And I think first responders share something that is unique to the military profession and, as 9/11 showed very overtly, is special to your profession, and that is the dignity of danger.

I think when everyone watched what happened that day it became very obvious that while we very much like away games, we like our wars over there, after 9/11 we have home games.

And truly, having watched once in a county where I live then unveil on Memorial Day not just the stone in this new memorial park for each of the five services, Coast Guard through Navy—Navy on top, of course—but also for the police and for the firefighters—and so I just want to say first thank you for that.

And second is I always was taken with over those 35 years or so pulling into ports from Mayport to San Diego and watching—Newport—watching some states permit you to have—to unionize but without collective rights, bargaining rights, and others to have bargaining rights, and others to not have either. Some have the whole enchilada.

I am a strong believer that whatever we do in the military should be equal for all, and so I honestly do believe that the goodness of the bill is that it does give a fair opportunity which I believe is one by law for people to unite together, decide they want to do this, as long as—which the law would—the legislation would provide for.

There isn't, just like in the military, the right to strike, because you are first responders. And to go forward as equal in California as in Mayport or Virginia—and I will end with that. I just wanted to say thank you very much for your service.

Thank you.

Chairman ANDREWS. We appreciate that.

And again, we thank the witnesses for their preparation. We appreciate everyone's participation today.

With that, the hearing is adjourned.

[Additional submissions of Mr. Kildee follow:]

Prepared Statement of Thomas J. Nee, President, National Association of Police Organizations

Chairman Andrews, Ranking Member Price, and members of the Subcommittee, my name is Tom Nee and I am a Patrolman with the Boston Police Department.

I also serve as the president of the Boston Police Patrolmen's Association, as well as the National Association of Police Organizations (NAPO). I am submitting this statement today on behalf of NAPO, representing over 241,000 rank-and-file state and local law enforcement officers throughout the United States. NAPO is a coalition of police unions and associations from across the nation, which was organized for the purpose of advancing the interests of America's law enforcement officers through legislative advocacy, political action and education.

I would like to express my gratitude to Chairman Andrews for holding a hearing on this very important issue. I would also like to extend my sincere thanks to Representative Dale Kildee, who not only authored the Public Safety Employer-Employee Cooperation Act, but has been its untiring champion for the past fifteen years.

Congress has long recognized the benefits of a cooperative working relationship between labor and management. Over the years, Congress has extended collective bargaining rights to public employees including letter carriers, postal clerks, public transit employees, and congressional employees. However, under federal and state laws, some public safety employees, including law enforcement, corrections, and fire, are denied the basic rights of collective bargaining. There are many law enforcement officers who put their lives on the line every day to preserve the security and peace that our nation enjoys. However, these same officers are denied the basic American rights of collective bargaining for wages, hours, and safe working conditions.

While many public safety agencies have benefited from a productive partnership between employers and employees, other agencies have not. Approximately twenty states do not fully protect the bargaining rights of public safety employees, and two states—Virginia and North Carolina—completely prohibit public safety employees from collectively bargaining.

Collective bargaining has proven to be the most effective and democratic means by which labor and management, in both the private and public sectors, have achieved cooperation and advancement, improved employment conditions, developed fair and reasonable disciplinary procedures, and increased productivity. History proves that the denial of the right of officers to collectively bargain and the absence of dispute-resolution mechanisms cause poor employee morale, inadequate working conditions, and less effective law enforcement.

The ability of first responders to talk about their jobs with their employers protects the public safety. Collective bargaining has produced measurable staffing, training, equipment, health and safety improvements throughout the nation's police departments resulting in safer police officers and improved local emergency response capabilities.

The Public Safety Employer-Employee Cooperation Act is a bipartisan bill that will guarantee the basic right of law enforcement officers, firefighters and emergency medical service workers in all fifty states to bargain collectively. If enacted into law, this legislation will give public safety officers the right to form and join a union or association of their choosing, but only if they choose to do so. It will allow public safety officers to negotiate working conditions and to seek better salaries, benefits, training and equipment. Most importantly, it will allow public safety officers to have a say in their own workplace, without fear of retaliation, by forcing management to take seriously the bona fide concerns and suggestions for improvement that rightfully come from the men and women who are actually out there doing the work.

It is important to note that while the Public Safety Employer-Employee Cooperation Act provides for fact finding and mediation to resolve disputes, it does not call for mandatory arbitration. This Act also recognizes that public safety is the number one priority for all rank-and-file employees and management, and thus prohibits strikes and lockouts by public safety officers and agencies they serve. States that offer equal or greater collective bargaining rights will be exempt from this federal statute. The legislation will not overturn current state right-to-work or collective bargaining laws—it will only provide basic collective bargaining rights to those who currently do not have them.

Furthermore, this bill specifically gives state and local legislatures the ability to approve or disapprove funding for collective bargaining contracts. State and local representatives will have the final say on matters of spending.

The goal of the Public Safety Employer-Employee Cooperation Act is to create 50 unique state laws, each written and administered by state officials. Ultimately, the federal government should have no role in the bargaining relationship between public safety agencies and employees.

Moreover, the limited federal role in the bill is more than justified by recent changes to the federal-state relationship on public safety issues. In the post-9/11 world, the federal government has come to rely on local public safety agencies to

achieve federal objectives. Protecting the homeland from natural and man-made disasters is a responsibility jointly shared by federal, state and local officials, and the Public Safety Employer-Employee Cooperation Act builds upon this intergovernmental approach.

In addition to unsound arguments that this Act would mean unprecedented federal intrusion into state and local decision making, some have raised concerns that granting public safety officers collective bargaining rights would "upset our nation's carefully developed emergency-response functions". NAPO finds these objections offensive to the public safety community. One only need to look at the performance and devotion to duty of the union members of the New York City Police and Fire Departments and the Port Authority Police Department on September 11, 2001, to realize that those fears are unfounded. The men and women who become law enforcement officers, fire fighters and emergency medical personnel do so because they have a strong sense of civic duty and they take their duty to serve and protect very seriously. As public safety officers working on the front lines to enforce the law and protect our communities, they have a right, a need, really, to have the trust and support of their federal government.

Detractors to the Public Safety Employer-Employee Cooperation Act who use national security as an excuse not to give this basic American right to public safety officers seem to be ignoring the facts surrounding the response to the September 11, 2001, terrorist attacks on the World Trade Center. Every New York City police officer who charged into the World Trade Center that day was a union member of the New York City Police Benevolent Association. Every Port Authority officer who risked and ultimately gave his life in the line of duty was a union member of the Port Authority Police Benevolent Association. All of these officers were members of NAPO. Additionally, every New York City fire fighter who responded to the World Trade Center and stood their ground to the death was a union member. Not one of them stopped to consider whether this risk was written in their contract before sacrificing their lives to save the lives of others. Those heroes, whom this nation rightly continues to honor, did not hesitate to do their duty because they knew that, God forbid, if they should die, their wives, husbands and children would be taken care of by their union.

The story of Port Authority Police Officer (and NAPO Director) Paul Nunziato best exemplifies how important collective bargaining rights are to the protection of the health and welfare of public safety officers and their families.

On September 11, 2001 the World Trade Center, the headquarters of the Port Authority of New York and New Jersey and the worldwide symbol of New York and America was attacked. Only 10 Port Authority police officers were working at the World Trade Center police command at the time of the terrorist attacks. Within minutes of the attacks, Port Authority police officers mobilized from all thirteen police commands to respond to the attacks. Officer Nunziato responded from home and was mobilized from his command, PATH, a subway system running between New York and New Jersey. Of the 23 members of his roll call at the PATH police command that day, only 10 came home. The Port Authority Police Department suffered the worst single day loss of life of any law enforcement agency in the history of the United States. Despite the tremendous risks, no Port Authority police officer refused an order to respond to the World Trade Center or to enter the towers on September 11th.

Unfortunately, Officer Nunziato has direct knowledge that the Port Authority's collective bargaining agreement provides security to its members and their families. Officer Nunziato's partner, Donald McIntyre, was one of 37 members of his police department who lost their lives in the World Trade Center evacuation effort. Officer McIntyre was married with two young children; his wife, Jeannine, was pregnant with their third child. Nothing could make up for the loss of Officer McIntyre to his family and that void will never be filled. However, it is comforting to know that Jeannine does not have to worry about paying bills or providing healthcare for her children due in large part to the benefits the Port Authority Police Benevolent Association (PBA) has negotiated for its membership.

The vast majority of the then 1,000 police officers in Officer Nunziato's agency worked steady 8 hour tours on a four day on two day off schedule. The officers had up to six weeks of vacation and additional personal leave time. By the end of the day on September 11th, the Port Authority Police Department switched everyone in the Department to twelve hour tours, seven days a week. Vacations and personal leave time were cancelled. The Port Authority PBA did not file any grievances regarding these changes. Everyone recognized that this was a crisis and that emergency measures needed to be resorted to. The officers' schedule did not return to normal for nearly three years. The bottom line is that, even in states with long and strong histories of collective negotiation rights for public safety personnel, manage-

ment retains discretion to respond to emergencies and potential security risks without negotiation with employees.

As the health risks associated with exposure to the World Trade Center site following 9/11 become more manifest, officers like Paul Nunziato are protected by their union's efforts to ensure that workers in the rescue and recovery effort are properly monitored and treated for exposure related diseases. Employers cannot be permitted to act unchecked because they do not place workers' interests first. For example, the City of New York repeatedly has denied that any of its police officers, firefighters, EMS personnel or other city workers were sickened by exposure to the World Trade Center site. Officer Nunziato's own agency has resisted classifying legitimate exposure diseases as injuries in the line of duty. Officer Nunziato was exposed that day and continued to be exposed for more than a thousand hours in the months afterward as part of the Ground Zero recovery effort. If it was not for his union, Officer Nunziato and his family would be dealing with his health and medical issues on their own, with no support.

As illustrated by Officer Nunziato's story, unionized officers will do their duty, without as much as a second thought, to protect our nation's security. It is an insult to those who gave their lives to think that their union contracts would have gotten in the way of their doing their jobs.

The public safety is best protected through effective partnerships between first responders on the front lines and the agencies that employ them. The tragic events of 9/11, Hurricane Katrina, and the many recent natural disasters have taught us that the network of federal and local emergency response that our federal government counts on to assist in any disaster must be able to function effectively and efficiently when called upon. To make that happen, we must first ensure that frontline responders are able to discuss with their employer how to best provide emergency services—and this legislation provides the guidelines for those discussions.

For the past 15 years, NAPO, joined by our brothers and sisters in the fire service represented by the International Association of Fire Fighters (IAFF), has led the fight to extend basic collective bargaining rights to all public safety officers. Granting all public safety officers the right to collectively bargain will be long overdue recognition for those who risk their own health and safety to protect the public. These officers deserve this basic American right. Through collective bargaining, employees find job security and more confidence in their jobs. Unions and associations not only provide a mechanism through which employees can collectively bargain, but they provide the assurance that the employees and their families have someone looking out for their interests and well-being.

NAPO was proud to work with members of the Committee last Congress to pass the Public Safety Employer-Employee Cooperation Act in the House of Representatives with overwhelming bipartisan support. We stand with you again to call on Congress to step up to the plate and act in a comprehensive fashion to mandate collective bargaining in states which do not have it. This legislation would allow law enforcement officers to negotiate on working conditions and to seek better salaries, benefits, and training, to protect their families and the public, and to retain an incentive to go into and then stay in the law enforcement profession.

Thank you for your time and consideration of this important issue and for your continued support of the law enforcement community.

Prepared Statement of David J. Holway, National President, National Association of Government Employees (SEIU/NAGE) and International Brotherhood of Police Officers (IBPO)

Mr. Chairman and Members of the Subcommittee: On behalf of the National Association of Government Employees (SEIU/NAGE), and the more than 100,000 workers we represent, including more than 20,000 of our members who are police officers, firefighters, EMTs and paramedics, I would like to thank you for the opportunity to submit this statement for the record regarding the Public Safety Employer-Employee Cooperation Act (H.R. 413).

Our union strongly supports H.R. 413. We believe that this is critical legislation for our country that will greatly improve the services that public safety officers provide to the American people. This legislation will give public safety workers the ability to provide meaningful input into workplace issues that impact them. These brave Americans provide critical services to their communities, often at great risk to their own safety and wellbeing. The least they should be afforded is a mechanism to open up a conversation with their employers about workplace issues.

H.R. 413 would provide a critical avenue for discussion by granting public safety officers a minimum level of collective bargaining rights in all states. The right to

collectively bargain over key issues of employment would be legitimized by some kind of dispute resolution, a requirement that could be met by fact finding or mediation. This legislation would not force employers into binding arbitration. This legislation also unequivocally prohibits strikes and lockouts, and does not override state right-to-work laws, specifically allowing states to continue enforcing laws that prohibit the collection of union fees as a condition of one's employment.

Police officers, fire fighters, and emergency medical personnel deserve the same right to discuss workplace issues with their employer that most American workers already enjoy. Public safety officers carry out a mission that is related to national security, but they still face many of the same workplace challenges those working in other sectors experience. The administration of overtime is a good example of an issue that is common to public safety officers and workers from other sectors. Collective bargaining, which leads to an enforceable agreement, can be a very valuable tool to standardize routine matters like the administration of overtime, and it can help to gain support from officers who were given a voice in the process. Yet, under current law, many states, counties, and municipalities cannot come to an agreement with the workforce on these kinds of issues even if they wanted to. As a matter of fairness, public safety officers should not be denied the essential right to bargain on conditions of employment simply because of their role in providing public safety.

Although some of the workplace issues that concern public safety officers are common to most workplaces, many other issues are far from routine. Public safety officers put their lives on the line every time they put on their uniform. In many ways cooperation and effective communication is more important in public safety professions than it is anywhere else. Information about the equipment and procedures that are needed to keep public safety officers and the general public out of harm's way are common topics in public safety collective bargaining agreements.

The unique mission of public safety work makes it even more critical that employees be able to cooperate and communicate effectively with their employers. Law enforcement is far more effective when critical information from the rank-and-file is being communicated effectively to management. The information gathered from officers in the field and filtered up is vital to decision making. In many ways, denying collective bargaining denies management an effective way to communicate with rank-and-file public safety workers and to include them in decision making. Studies have shown time and time and again that cooperation between public safety officers and their employers leads to improved public safety as a whole and better safety for the public safety officers themselves.

There is no reason to fear the impact of public safety collective bargaining in every state. A majority of states already meet or exceed the minimum standards for collective bargaining for which H.R. 413 calls, and there is a rich history of employer-employee cooperation in these states. Public safety employees in the states that are impacted face the same issues as public safety workers in states that already have collective bargaining, yet the workers in these states have no voice in the process. It is a great source of frustration for officers who know that workers in other parts of the country have a meaningful voice in their workplace, and they do not.

Although this legislation requires states to establish minimum standards for collective bargaining, it is carefully written to be very unimposing on states. States that already have bargaining in place would be unaffected by the legislation. No existing collective bargaining agreements would be overridden by the changes proposed in the bill. For the states that are impacted, they would be given great flexibility to establish the collective bargaining standards that meet their needs. The important thing is that all states establish some minimum level of collective bargaining, and this legislation accomplishes that.

The time has come to finally pass the Public Safety Employer-Employee Cooperation Act. This legislation has been around for many years, and every aspect of the bill has been debated. In the last session of Congress, this bill came very close to being enacted into law. The bill enjoyed strong bipartisan support in both the House and the Senate. After passing by an overwhelming majority in the House (314-97), the bill stalled in the Senate due mainly to procedural mishaps. It is time to put this issue to bed once and for all. Public safety officers in all parts of the country deserve the right to have a voice in the workplace. Let's not deny them that right any longer.

I will conclude with an example of how collective bargaining can have a tremendous impact on the delivery of public safety. Due to the economic downturn, the state of Connecticut had a budget that was $3 billion in the red. Faced with the prospect of broad layoffs in public safety and other services, the state came to the unions for help. The unions, including International Brotherhood of Police Officers (IBPO/NAGE) Local 731, made numerous concessions to help get the state's finances

in order. About 3000 state employees took early retirements. Workers that remained on the job accepted furloughs, cuts to retirement pensions, and health care premium and fee increases. In total, the state was able to get $2.7 billion in budget cuts from the employees. This was a very tough pill to swallow, but we knew that the state of Connecticut was in trouble. An estimated 2500-3000 workers were going to be laid off, which would have created a whole new set of problems for the state. However, because of the concessions the employees made, not a single Connecticut state employee was let go.

Without these concessions, many of the newest state workers would have been laid off. In areas of public safety, these employees would have walked away with the many thousands of dollars worth of training the state just poured into preparing them for service, an estimated $35,000 per employee for the workers we represent. Courthouses would have been dangerously understaffed, there would have been backlogs in the movement of prisoners, and numerous other problems would have been created by the reduced staffing. In the end, public safety would have been compromised by the cuts.

Because the state had the unions to work with, layoffs were avoided. Employees were not happy, but they were given a voice in the process, and in the end they made choices that were the best for the safety of the communities in Connecticut and for the public safety workers themselves. Without the unions, it would have been impossible to take a scalpel to the state budget. The cuts would have been made with a hatchet, and the impact of the cuts would have been far worse. Without collective bargaining, this success story would not have been possible. In many states, this kind of cooperation is still impossible.

The passage of the Public Safety Employer-Employee Cooperation Act is long overdue. We urge the Subcommittee to consider and report favorably on this legislation.

Once again, we greatly appreciate the Subcommittee's decision to hold a hearing on this matter. I thank the Subcommittee for the opportunity to provide this statement for the record.

Prepared Statement of Michael B. Filler, Director, Public Service Division, International Brotherhood of Teamsters

The International Brotherhood of Teamsters (IBT) represents 1.4 million dedicated men and woman throughout North America, including a significant number of law enforcement officers. The IBT's Public Services Division oversees the Teamsters Law Enforcement League, (TLEL), which provides assistance to police, corrections and public safety officers, as well as sheriff's deputies, seeking effective legal representation and an experienced voice on matters of importance, such as wages, benefits, and working conditions.

Congress has, on several occasions, attempted to address the needs of law enforcement officers, fire fighters, and first responders through the Public Safety Employer-Employee Cooperation Act. This should be the year that real justice is achieved for those who have selflessly carried out their responsibilities under such arduous and often life-threatening conditions.

Truly Honoring Their Dedication

Many accolades are frequently offered by elected officials in recognition of the valiant men and women who serve and protect us. Is it not disingenuous to speak of the courage displayed by law enforcement officers, fire fighters and first responders in one breath, and then argue against passage of what should be a basic right in the United States of America?

When a crime is being committed, a building is burning, or people are seriously injured in an act of terrorism, collective bargaining agreements have never gotten in the way of getting the job done.

As we begin the second decade of the 21st century, it is time to truly honor the dedication of our local heroes by passing a federal law requiring all states to afford these specific public employees—who have democratically chosen their workplace representatives—the opportunity to negotiate their wages, benefits and working conditions.

Collective Bargaining Facilitates Workplace Innovation Which Benefits the Public

Law enforcement officers, fire fighters and first responders are on the front lines on a daily basis; as such, their experience can offer valuable insight into ways to better protect and serve the public. The volumes of evidence on high performing organizations highlight the important role that employee engagement plays in identifying workplace problems and improving performance.

A statutory framework for collective bargaining will provide the necessary legal guarantees to ensure that the aforementioned public safety officers will be able to negotiate appropriate arrangements to improve the delivery of services to the public with a special focus on cost-effectiveness.

Denying a voice fosters a disengaged workforce and serves to perpetuate an "exit strategy" resulting in high turnover and the loss of critical knowledge. Without unionized protection, which is reinforced through the collective bargaining process, fear about exercising a voice becomes more prevalent. Allowing such a system to continue is not sound public policy and will put our communities at risk.

With Fair Legal Standards, Neither Side Can Monopolize the Process

Existing state laws that permit collective bargaining on behalf of public employees typically include requirements that establish standards for good faith negotiations. One opponent of H.R. 413 has asserted without credible evidence, that passage of the legislation will result in "monopolistic bargaining." While such terminology is undefined, it clearly ignores the bilateral nature of the collective bargaining in the public sector.

In addition to creating a process for addressing workplace concerns, collective bargaining can be an effective way to promote stability within a police department, because it allows for constructive input on economic interests—i.e., the setting of wages and benefits. Since most agreements are multi-year in duration, law enforcement officers in states that allow collective bargaining have a level of predictability on future compensation and can better manage their financial matters.

Conclusion

The principles embodied within H.R. 413 are essential rights that all law enforcement officers, fire fighters, and first responders should have. It creates the opportunity for cooperation through collective bargaining, while not mandating the adoption of specific employment conditions. The legislation establishes the correct balance between national standards and the important role that states and localities will play in implementing the law, when public safety officers vote for union representation.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]