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Mandatory Collective Bargaining Creates More Problems Than It Solves

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Legislation before Congress would require almost all state and local governments to recognize public sector unions as the exclusive representative of their public safety employees. Supporters contend that the Public Safety Employer–Employee Cooperation Act (H.R. 980) would lead to increased cooperation between public safety workers and the government. In fact, most public safety employees already belong to unions. Experience suggests that collective bargaining would not further cooperation but that it would impose a large unfunded mandate on the states. Congress exempts federal public safety employees from collective bargaining requirements, and it should continue to allow state and local governments to do likewise if they see fit.

Most Already Belong to Unions. H.R. 980 would require almost every state and local government to collectively bargain with public safety employees (policemen, firefighters, and emergency medical personnel). It would override local decision-making and force many states and localities to adopt a model they have determined to be inappropriate.

The legislation is also a solution in search of a problem. Thirty-four states already have collective bargaining for both police and firefighters.[1] Four states extend collective bargaining privileges to firefighters but not police officers.[2] In states without laws mandating collective bargaining, some local governments nonetheless do so. Other states authorize public employers to voluntarily recognize collective bargaining agreements, but do not require it.

Consequently, large majorities of public safety employees already collectively bargain. In fact, 58.7 percent of police officers and sheriffs' patrol officers and 70.3 percent of firefighters are covered by collective bargaining agreements.[3]

Fomenting Conflict, Not Cooperation. Experience demonstrates that collective bargaining does not lead to increased cooperation between public safety employees and their employers. The process is inherently adversarial. Pitting employees and employers against each other at the bargaining table creates as much conflict as cooperation.

Public sector employees will often strike when the law explicitly forbids it, putting vital public services at risk. In September 2006, Detroit public school teachers went on strike. Despite a court order telling them to return to work, hundreds of thousands of students started the school year late. In December 2005, an illegal strike by transit workers paralyzed New York City during the busiest shopping days of the year.

Collective bargaining creates strife even when workers do not strike. The National Air Traffic Controllers Association has fought contentiously with the federal government to raise salaries to $200,000 a year.

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An Unfunded Mandate. H.R. 980 would impose a substantial unfunded mandate on state and local governments. A union's monopoly over bargaining makes it a cartel that prevents employers from hiring workers who would do the same job for less than union wages. That benefits union members at the expense of their potential competitors. It also means that state and local governments must pay more to have the same work done. Without providing financing for the mandate, the act will force these governments to either cut services or raise taxes.

Congress Exempts Itself. The government should promote public safety employees on the basis of merit and ability, not union seniority. Inflexible regulations that are designed to benefit union members sometimes stand in the way of the public good.

Curiously, Congress gives itself the same flexibility in dealing with public safety employees that H.R. 980 would deny to local governments. Federal national security workers cannot collectively bargain. The Civil Service Reform Act of 1978 explicitly prohibits CIA, FBI, National Security Agency, and Secret Service employees from collective bargaining. Subsequent executive orders have extended this prohibition to many more national security-related agencies. Congress should not deny state and local governments the flexibility to decide for themselves whether or not collective bargaining would interfere with their duty to protect the public.

Conclusion. H.R. 980 is a solution in search of a problem. Most states already require or allow public safety employees to collectively bargain, and large majorities of police officers and firefighters already belong to unions. Furthermore, collective bargaining does not necessarily lead to a more cooperative workplace. H.R. 980 would impose a large unfunded mandate on state and local governments that do not currently use collective bargaining. The exemption for certain federal employees shows that Congress recognizes the need for flexibility in some areas. It should not take away the ability of state and local governments to choose to collectively bargain or not, depending on their local circumstances.

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1. R. Theodore Clark, Jr., Partner, Seyfarth Shaw, LLP, "Testimony Before the Committee on Education and Labor, U.S. House of Representatives," June 5, 2007, at *http://edworkforce.house.gov/testimony/060507RTheodoreClarkTestimony.pdf*. These states are Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, and Wisconsin.
2. *Ibid*. These states are Alabama, Georgia, Idaho, and Wyoming.
3. Barry Hirsch and David MacPherson, "V. Occupation: Union Membership, Coverage, Density, and Employment by Occupation, 2006," Union Membership and Coverage Database from the CPS, at *www.trinity.edu/bhirsch/unionstats*.