

College and University Professional Association for Human Resources (CUPA-HR)
International City/County Management Association (ICMA)
International Municipal Lawyers Association (IMLA)
International Public Management Association for Human Resources (IPMA-HR)
National Association of Counties (NACo)
National League of Cities (NLC)
National Public Employer Labor Relations Association (NPELRA)

July 23, 2007

The Honorable Edward M. Kennedy
Chairman
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

Re: Public Employer-Employee Cooperation Act of 2007 (H.R. 980)

Dear Chairman Kennedy and Ranking Member Enzi:

As you are aware the House of Representatives passed the Public Employer-Employee Cooperation Act of 2007 (H.R. 980) on July 17, 2007. The above organizations are not opposed to collective bargaining but believe that this legislation would unnecessarily federalize a traditionally state and local function. The federal government has never regulated public sector collective bargaining and in fact, specifically excluded states and localities from coverage under the National Labor Relations Act, the federal law which governs labor relations in the private sector.

We believe H.R. 980 is unnecessary for many reasons, primarily because nearly all states already have some form of collective bargaining either through a statewide law or by allowing individual localities to determine whether or not to engage in collective bargaining.¹ While two states – North Carolina and Virginia – prohibit collective

¹ Only Virginia and North Carolina expressly prohibit public sector bargaining. Fifteen states allow localities to determine collective bargaining: Alabama*, Arkansas*, Arizona, Colorado, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, South

bargaining for public sector employees, voters in those states are perfectly capable of urging their state government to change the law.

Proponents of H.R. 980 argue that it will not interfere with existing states' laws but the text of the bill belies this argument. H.R. 980 specifically states that the Federal Labor Relations Authority (FLRA) "shall make a determination as to whether a State substantially provides for the rights and responsibilities described in subsection (b)." Subsection (b) has five separate requirements including that States provide for the bargaining over wages, hours and terms and conditions of employment.

The "terms and conditions of employment" is ambiguous and gives the FLRA substantial authority over the allocation of state and local resources. State and local governments are in the best position to determine how to allocate their resources and what meets their needs most effectively. Further, there is no indication in H.R. 980 that any of the costs of transferring to, or implementing, the proposed federal regime will be offset by federal funding.

In addition, a federal regime is unnecessary because state and local governments do consider collective bargaining and make political compromises that suit the needs of the individual jurisdiction. For example, during the 2007 session, the Oregon legislature engaged in a contentious debate over whether or not minimum staffing levels of fire departments and overtime could be included in collective bargaining.

The result is that beginning 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 this year and individuals, associations, and firefighters weighed in. Firefighters in Oregon did not need any federal legislation to resolve this issue and the compromise took into consideration the allocation of scarce local resources and allowed Oregon to consider the successes and failures in other states.

In 2005, the Texas legislature passed a voluntary meet and confer law for firefighters and police² and in May 2007, the Missouri Supreme Court ruled that the state constitution allows public employees as well as private sector employees to engage in collective bargaining. The court held that public employers who engage in meet and confer are legally bound by the terms of the resulting agreement and cannot unilaterally change it³. Note that the Missouri decision interprets the Missouri Constitution, and that federal law will interfere with decades of state constitutional law. These examples show that in fact

Carolina*, Tennessee*, Texas, and West Virginia. *These states do not provide for legally enforceable contracts. Four states provide for bargaining for firefighters only: Idaho, Missouri, Utah and Wyoming Source: BNA Daily Labor Report, July 18, 2007.

² The Texas law does not require a public agency to engage in meet & confer but it does illustrate that the state legislature is aware of and is debating the issue.

³ [*Independence-National Education Association, et al., v. Independence School District*](#), Docket No. SC87980, May 29, 2007.

states are handling collective bargaining issues and fashioning solutions that fit their particular circumstances.

Finally, it is not clear that the federal government has the constitutional authority to regulate collective bargaining at the state and local level. When a similar bill was considered in 2000 by the House of Representatives, George Costello, legislative attorney for the Congressional Research Service testified that Congress likely lacked the authority to pass the law under Section 5 of the 14th Amendment and that Supreme Court precedent for Congress' authority under the Commerce Clause was on shaky ground.⁴

In June 2007, Neil E. Reichenberg, executive director of IPMA-HR testified on behalf of IPMA-HR and IMLA and R. Theodore Clark, Jr. testified on behalf of NPELRA in opposition to H.R. 980 before the House Subcommittee on Health Education Labor and Pensions. The arguments above are more fully explained in the testimony which is available online <http://edlabor.house.gov/hearings/help060507.shtml>.

Sincerely,

Josh Ulman, CUPA-HR, (703) 435-7119
Elizabeth Keller, ICMA, (202) 289-4262
Charles W. Thompson, Jr., IMLA, (202) 466-5424
Neil E. Reichenberg, IPMA-HR, (703) 549-7100
Daria Daniel, NACo, (202) 942-4212
Neil Bomberg, NLC, (202) 626-3020
Michael T. Kolb, NPELRA, (760) 433-1686

⁴ Mr. Costello's testimony is available online
<http://republicans.edlabor.house.gov/archive/hearings/106th/eer/pubsafety5900/costello.htm>