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Mandatory Public-Safety Collective Bargaining Could be Made Less Onerous

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Many Members of Congress want to require state and local governments to bargain collectively with police, firefighters, and emergency medical personnel. Congress should not deny state and local governments the choice of whether and how to bargain collectively with public-safety employees. If it is intent on doing so, however, Congress should ensure that it takes steps to mitigate the harmful unintended consequences that this proposal would entail. Specifically, Congress should:

- **Enforce** the ban on strikes by public-safety employees,
- **Prevent** collective bargaining over the use deadly force,
- **Protect** merit promotions and disciplinary standards,
- **Protect** the right of voters to decide how much they will spend on public services,
- **Ensure** that states are not forced into binding arbitration, and
- **Protect** volunteer firefighters from union discipline.

Congress should protect state and local choice in collective bargaining arrangements. However, these steps would reduce the damage that mandatory collective bargaining would cause.

Public Safety Employer–Employee Cooperation Act. The Public Safety Employer–Employee Cooperation Act (S. 2123), which requires state and local governments to bargain collectively with public-safety workers, is of dubious constitutionality and would deny local governments the ability to match their policies to local conditions, would foster hostile employer–employee relations, and would have many unintended consequences.[1] Despite these flaws, however, the legislation has significant support in Congress and could well become law. If Congress wants to require local governments to bargain collectively, it should mitigate the potentially harmful consequences of this legislation.

Enforceable Strike Prohibition. Police and firefighter strikes endanger public safety. Homes should not burn down because the local fire department has gone on strike. Virtually all state and local public-safety bargaining laws prohibit strikes for this reason. S. 2123 technically bans public-safety employee strikes. As written, however, this ban is meaningless and will not prevent strikes.

Public-sector strikes frequently occur despite being against the law. The New York City transit strike over Christmas 2005 and the Detroit teachers' strikes were both illegal. Public-sector unions ignore the law and go on strike because they know they can negotiate an amnesty as part of the contract by which they return to work.

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To protect the public safety and prevent illegal strikes, Congress needs to make the no-strike provisions enforceable. Congress should impose stiff fines against public-safety unions for each day a member is on strike. Congress also needs to prohibit unions from negotiating an amnesty that waives those fines after the strike has concluded. Without such provisions, the no-strike clauses are empty gestures.

Bargaining Over All Terms and Conditions of Employment. S. 2123 requires the Federal Labor Relations Authority (FLRA) to write new collective bargaining statutes for any state or local government that does not allow collective bargaining over "hours, wages, and terms and conditions of employment."[2] The phrase "terms of conditions of employment" covers almost every aspect of working conditions and requires collective bargaining over many items that ought to be kept off the negotiating table. Many states expressly limit what unions can bargain over, and for good reasons. Congress should narrow the definition of "terms and conditions of employment" to forestall many unintended consequences.

No Bargaining Over Deadly Force. The conditions under which law enforcement officers are authorized to use force, including deadly force, is a term and condition of their employment. Some states, such as Illinois, expressly prohibit collective bargaining over when police officers may use force.[3]

Americans need police protection against criminals, but the use of force against American citizens is a serious matter. Many Americans have concerns about the excessive use of force and police brutality. Voters' elected representatives—not closed-door union negotiations—should strike the balance between protecting the rights of U.S. citizens and providing the police with the tools they need to do their job. Congress should specify that the conditions under which law enforcement officers use force is not a term and condition of employment that state and local governments must negotiate.

Protect Merit Pay and Disciplinary Standards. S. 2123 would require local governments to open merit promotions and disciplinary standards to collective bargaining. These are terms and conditions of employment. Unions strongly support seniority-based promotions and raises and insist on them in negotiations. They also prefer grievance procedures that make it difficult to discipline or lay off underperforming employees.

This makes businesses less competitive in the private sector. In public-safety occupations, it can cost lives. The doctors treating an injured patient rushing to the hospital should be in the ambulance on the basis of their merits, not because they have seniority. Similarly, a fire department needs the authority to discipline or fire an employee who shows up to work drunk. Union grievance procedures and job protections stand in the way of public safety.

That is why even strongly pro-union states take these issues off the bargaining table. The Michigan state constitution protects the ability of state troopers to bargain collectively but specifies that all promotions must be "determined by competitive examination and performance on the basis of merit, efficiency and fitness."[4] Other states specify that irrespective of a collective bargaining agreement, local governments may discipline, discharge, or demote an employee for just cause. This is essential for protecting public safety.

As written, S. 2123 would force every state to subject merit promotions and disciplinary standards to collective bargaining, protecting irresponsible workers at the expense of public safety. Congress should exempt merit promotions, raises, and disciplinary standards from the terms and con-

1. James Sherk, "Mandatory Collective Bargaining Creates More Problems Than It Solves," Heritage Foundation *WebMemo* No. 1538, July 6, 2007, at *http://www.heritage.org/Research/GovernmentReform/wm1538.cfm*, and James Sherk, "The Public Safety Employer Employee Cooperation Act Removes State Flexibility," Heritage Foundation *WebMemo* No. 1537, July 6, 2007, at *http://www.heritage.org/Research/GovernmentReform/wm1537.cfm*.
2. S. 2123, Section 4(b)(3).
3. Illinois Public Labor Relations Act, 5 ILCS 315/14(i).
4. Michigan State Constitution, Article XI, Section 5.

ditions of employment about which local governments must bargain.

Protect Taxpayer Control Over Spending Levels. Another term and condition of employment is the level of services a state or local government provides. There are valid public-policy arguments for allowing unions to bargain collectively over wages. However, it makes no sense to allow public-sector unions to negotiate the size of the budget allocated to their services. It is up to voters to decide how much they wish to spend on fire protection and how much on other services, such as public education.

Many states prohibit unions from doing this. Delaware's code states that "a public employer is not required to engage in collective bargaining…[over] its standards of services, overall budget…and the staffing levels, selection and direction of personnel."[5] S. 2123 would preempt every such statute. Voters' elected representatives, not unions, should decide how much they want to spend on various public services. Congress should expressly exclude the amount taxpayers spend on public services from the terms and conditions of employment subject to bargaining by public-safety unions.

No Mandatory Binding Arbitration. Since the legislation prohibits strikes, S. 2123 requires states to provide a means to resolve bargaining impasses. Section 4(b)(4) requires states to make available "an interest impasse resolution mechanism, such as fact-finding, mediation, arbitration, or comparable procedures." Fact-finding and mediation can be useful ways to resolve bargaining impasses. However, Congress should prevent the FLRA from imposing binding arbitration on state and local governments.

In binding arbitration, both sides present their cases before an arbitrator, who issues a decision that is binding on both parties. Binding arbitration takes control over government spending out of the hands of elected representatives. The arbitrator's decision is final and binding. The state or county must spend whatever the arbitrator awards. This violates the principles of representative democracy. Congress should not force states into binding arbitration.

Protect Volunteer Firefighters. S. 2123 also threatens volunteer fire departments. The International Association of Fire Fighters (IAFF), the union representing professional firefighters, strongly opposes volunteer fire departments because they reduce the need for paid fire departments. The legislation no longer permits the IAFF to negotiate contracts banning off-duty volunteering by professional firefighters.

However, collective bargaining contracts are only one method the IAFF uses to prevent its members from volunteering to protect their communities. The IAFF constitution imposes steep fines on any member who belongs to "a rival organization"—namely, volunteer fire departments. These fines are enforceable in state courts.[6]

Requiring every state and local government to bargain collectively with their fire departments will bring tens of thousands of professional firefighters who volunteer in their spare time into the IAFF. Union discipline and fines will force many of these volunteer firefighters to quit. Congress can prevent this from happening by requiring unions to respect the rights of volunteer firefighters. Congress should specify that any union that disciplines, fines, retaliates, or discriminates against its members for part-time or volunteer firefighting may not receive FLRA certification as an exclusive bargaining representative.

What Congress Should Do. The concept underlying the Public Safety Employer Employee Cooperation Act is fatally flawed. Collective bargaining often creates as much strife in labor–management relations as cooperation does, and Congress should not dictate the details of how state and local governments manage their employees.

However, if Congress is going to force states to bargain collectively with public-safety employees, it can take steps to mitigate the harmful unintended consequences of the act. Specifically, Congress should:

5. 19 Delaware Code, Section 1605.
6. International Association of Fire Fighters, Constitution and By-Laws, Article XV.

- **Prevent** illegally striking public-safety workers who endanger the public from receiving amnesty after the strike ends,
- **Exclude** the conditions under which police officers use deadly force from the terms and conditions of employment about which employers must bargain,
- **Exclude** merit promotions and disciplinary standards from the terms and conditions of employment about which employers must bargain,
- **Exclude** how much state and local governments spend on public services from the terms and conditions of employment subject to bargaining,
- **Ensure** that states are not forced into binding arbitration so that voters' elected representatives have the final say on all spending decisions, and
- **Require** that unions certified by the FLRA as exclusive bargaining representatives do not discipline or retaliate against part-time and volunteer firefighters.

These steps would not make a federal mandate that state and local governments bargain collectively a good policy, but they would reduce the harm that this policy would cause.

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