

Will Congress Mandate State and Local Unions? 'Public-Safety' Act Would Turn Federalism Upside Down

By Stan Greer

Summary: While the press has reported extensively on labor union efforts to accelerate private-sector union organizing by having Congress pass "card check" legislation, it has paid little attention to related efforts in Congress to mandate unionization in state and local government agencies. The union-supported "Public Safety Employer-Employee Cooperation Act" deserves increased public scrutiny.

A federal mandate imposing "exclusive representation" (i.e. monopoly bargaining) for labor unions over state and local government employees has long been an objective of organized labor. With the elections forthcoming this fall, unions hope they will have the votes in Congress—and possibly an ally in the White House—to achieve at least part of that objective through passage of the "Public Safety Employer-Employee Cooperation Act."

Since the late 1990s, unions have

pushed for legislation to federalize union monopoly control over public-safety employees—police, firefighters and paramedics—as a first step toward corralling all state and local government employees into unions. In the current Congress, Rep. Dale Kildee (D-Mich.) and Sen. Judd Gregg (R-N.H.) are the lead sponsors of bills (H.R. 980 and S.2123) to federalize public

safety unionism.

While for more than seven decades federal laws have authorized private-sector union bargaining in all 50 states, the constitutional principle of federalism has protected the rights of each state and locality to set its own policies regarding the unionization of government employees. Regrettably, many states have enacted

Volunteer Firefighters May Get 'Burned'

One of several concerns about the Public Safety Employer-Employee Cooperation Act (H.R.980/S.2123) raised during committee and floor debates in Congress is that it could lead to penalties for professional firefighters who volunteer at local fire departments on their own time. These are called "two-hatters."

As Sen. Susan Collins (R-Maine) has observed, the bill's language does not explicitly attack volunteers. But leaders of the International Association of Firefighters (IAFF) union, the bill's primary champions, are virulently hostile toward two-hatters. The IAFF constitution explicitly states that a firefighter may be reprimanded, fined, removed from union office, suspended or expelled for acquiring membership in any "rival" organization,



"including volunteer fire departments or associations."

In recent years, IAFF locals in Fort Wayne, Indiana, and West Allis, Wisconsin, for example, have wielded their "exclusive" bargaining power to negotiate contract provisions that bar both union members and nonmembers from volunteering.

Sec.8(a)(5) of S.2123 states: "Nothing in this Act shall be construed" to

(Continued on page 5)

August 2008

Will Congress Mandate State and Local Unions?

page 1

Volunteer Firefighters

page 1

Labor Notes

page 6

laws that empower union officials to exert monopoly-bargaining control over public-safety employees.

However, roughly half of the states thus far either have refused to grant union officials monopoly control over public-safety employment, or have acquiesced to more limited forms of “exclusive” bargaining. The proposed Public Safety Employer-Employee Cooperation Act now before Congress would override the judgment of elected officials in these states.

H.R.980 was rubber-stamped by the House in July 2007 with the support of nearly every House Democrat and many House Republicans. As this issue of *Labor Watch* went to press, S.2123 was pending in the Senate.

Monopoly-Bargaining Bill

Hundreds of thousands of police, firefighters, paramedics and emergency medical technicians (EMTs) who are free under state law to negotiate on their own behalf with their employers will be stripped of that freedom if Congress passes H.R.980/S.2123. That’s why the Public Safety Employer-Employee Cooperation Act ought to be titled the “Police/Fire Monopoly-Bargaining Bill.”

Contrary to the claims of union advocates, H.R.980/S.2123 has nothing to do with protecting the right of police, firemen and EMTs to join a union. The right to join a union is already protected in all 50 states.

Nor does this legislation uphold the right of union officials to bargain on be-

half of their members. On the contrary, any state law or local ordinance currently authorizing public-safety union officials to bargain on behalf of their members, and only their members, will be swept aside if H.R.980/S.2123 becomes law.

That’s because the legislation empowers union officials to bargain on behalf of police and firefighters who refuse to join a union and want nothing to do with it, as well as those who voluntarily join a union. Proponents of H.R.980/S.2123 believe it is a “basic right” of public-safety officers to

as a monopoly-bargaining agent. And by promoting monopoly bargaining, it will also in many cases strip public employees of the freedom to refuse to pay dues or fees to the union.

There are other serious concerns about this legislation. Historically, states that enact monopoly-bargaining laws experience dramatic increases in public-sector strikes—both legal and illegal—and work stoppages that are especially troubling when public safety is at stake. Moreover, monopoly bargaining sharply increases

Historically, states that enact monopoly-bargaining laws experience dramatic increases in public-sector strikes—both legal and illegal—and work stoppages that are... troubling when public safety is at stake.

be forced to accept union representation, even if they don’t ask for it.

Americans don’t support the union position. A December 2006 nationwide opinion survey commissioned by the National Institute for Labor Relations Research and conducted by veteran pollster Del Ali and his firm Research 2000 found that 81 percent of Americans who regularly vote in statewide elections believe employees in unionized businesses should retain the right to bargain for themselves.

Right to Work Unprotected

Big Labor and its Capitol Hill allies who support this legislation have sent a very troubling message about where their priorities lie. They think it is the business of Congress to promote union monopoly bargaining over state and local employees, even if that means trampling on the traditional prerogatives of state and local governments. By contrast, they don’t think they have any obligation to ensure that state and local government employees have the freedom to work (or “right to work”) without being forced to pay union dues or fees.

The fundamental problem with the so-called “Public Safety Employer-Employee Cooperation Act” is that it violates employee rights to reject an unwanted union

union officials’ political power. Politicians are more likely to make state and local taxpayers foot the bill for union strikes rather than alienate union officials they are courting.

Even without strikes or strike threats, public-sector monopoly bargaining puts local governments under intense pressure to acquiesce to union officials’ demands for wasteful work rules and featherbedding. Over time, when public officials cave in to these demands they will impose a heavy cost on citizens who will have to absorb tax hikes or public service cutbacks to keep their locality solvent.

‘Two, Three Many Vallejos’

The danger is real. On May 6, the city council of Vallejo, California, a seemingly prosperous San Francisco suburb of 120,000 residents, voted to declare bankruptcy because, local officials contended, it was the least bad option given horrific fiscal problems spawned by public-sector union monopoly bargaining.

“The substantial majority of the City’s General Fund revenues are dedicated each year to pay the costs of labor,” the bankruptcy filing explained. “Those costs are controlled by collective [monopoly] bargaining agreements, the terms of which the City cannot unilaterally change.”

Editor: Patrick J. Reilly
Publisher: Terrence Scanlon
Address: 1513 16th Street, NW
Washington, DC 20036-1480
Phone: (202) 483-6900
Email: preilly@capitalresearch.org
Website: www.capitalresearch.org

Labor Watch is published by Capital Research Center, a non-partisan education and research organization classified by the IRS as a 501(c)(3) public charity. Reprints are available for \$2.50 prepaid to Capital Research Center.

Specifically, the agreements control how much the city spends on “base pay, overtime, health and medical benefits, pension and retiree health benefits and other compensation components, such as vacation accrual.”

After cutting 87 full-time employees, leaving a workforce of roughly 600, Vallejo must declare bankruptcy “to pay our bills,” argues Mayor Osby Davis. There will be long-term financial repercussions for the city. Vallejo’s drastic step is on the verge of being replicated in other localities with onerous labor agreements, which demonstrates the terrible toll that monopoly bargaining can take on government finances.

To paraphrase Che Guevara, if union allies in Congress have their way, “two, three, many Vallejos” will almost inevitably result.

Failed Precedents

The Public Safety Employer-Employee Cooperation Act has clear precedent in failed legislation before Congress in 1975 that would have authorized union officials to seek and obtain “exclusive” bargaining power over state and local government employees in all 50 states.

The 94th or “Watergate” Congress of 1975-76 was the most doggedly committed since the Great Depression to expanding the share of American employees who are unionized. For instance, Congress overwhelmingly approved so-called “common situs picketing” legislation that would have granted an array of special privileges to building-trades union officials, including the power to shut down an entire construction site over a dispute with a single subcontractor. Only President Gerald Ford’s unexpected veto in early 1976 prevented that radical measure from becoming law. Ford acted under intense lobbying pressure from right-to-work supporters. He also was eager to take an important issue away from Ronald Reagan, his Republican rival for the presidency.

Another bill, H.R. 77, introduced by Rep. Frank Thompson (D-N.J.), later of Abscam fame, would have imposed monopoly bargaining on all public employees. It also had strong support in Congress. Rep. Ed-

ward Roybal (D-Calif.) introduced another measure (H.R. 1488) to accomplish the same objective. Top officials of government unions led by Jerry Wurf, president of the American Federation of State, County and Municipal Employees (AFSCME), lobbied intensively for the legislation.

Despite the strong efforts made to impose “exclusive” bargaining power over all public employees, House Speaker Carl Albert (D-Okla.) and other Democratic congressional leaders were leery about promoting the radical legislation. The 94th Congress adjourned before a committee vote was held on either the Thompson or Roybal bills.

Current Prospects

So what will be the fate of the current effort? Given the weak response of Republican leaders, union-friendly Democrats may finally have their chance—especially with a strong showing in November’s elections and if there is a Democrat in the White House.

Last year Speaker Nancy Pelosi (D-Calif.) moved to ram H.R. 980 through the House of Representatives. In light of both the unpopularity of union monopoly bargaining and the serious bread-and-butter concerns associated with this measure, one might suppose that House GOP leaders would have mounted a stiff resistance. It was not forthcoming.

The Republican leadership acted much too late to halt the bill. Republicans were limp from the time Rep. Bob Andrews (D-N.J.) held a hearing on the legislation on June 5, 2007, through July 16, the day before it came up for a final vote. They didn’t even try to stop Pelosi from ramming through the bill under suspension of the rules, a procedure prohibiting all amendments.

It wasn’t until the morning of July 17, the day of the floor vote, that Minority Whip Roy Blunt’s office finally responded to growing pressure from rank-and-file GOP House members by belatedly putting out an e-mail letter opposing H.R. 980. This was long after Rep. Buck McKeon (R-Calif.), ranking member of the Education & Labor Committee, had lobbied his fellow Republicans to rubber-stamp

H.R. 980 when it came up for a committee vote, claiming that the bill would be “fixed” on the floor.

After a shockingly easy 314-97 House victory, union lobbyists may have expected to encounter only scant resistance in the Senate. But grassroots opposition from constituents of key swing-vote senators was strong, preventing Senate Majority Leader Harry Reid (D-Nev.) from rallying enough support to bring S. 2123 or H.R. 980 up for a final vote.

To nail down the required 60 Senate votes to shut down extended debate and force a final floor vote, union lobbyists realized that they needed the votes of a handful of self-styled right-to-work supporters in Senate to add to their several dozen votes from unabashed forced-unionism advocates. Republican Judd Gregg of New Hampshire claims to support “right to work,” as do Senators John Sununu (R-N.H.), Mel Martinez (R-Fla.) and Norm Coleman (R-Minn.). But Gregg is the lead sponsor of S. 2123 and the others are all co-sponsors of his bill, along with Senate Democrats like Edward Kennedy (Mass.), Tom Harkin (Iowa) and Barbara Mikulski (Md.) and Independent Bernie Sanders (Vt.).

Democratic senators like Mary Landrieu (La.), Tim Johnson (S.D.) and Ken Salazar (Colo.) know public support for “right to work” is especially strong in their home states, but they also know they depend on Big Labor’s forced dues-funded political machine to stay in office. Although they are not currently S. 2123 cosponsors, they are likely willing to vote for this legislation, as long as they do not attract too much attention while doing so.

So why the weak Republican resistance—and in some cases, outright support for the bills? Perhaps some legislators were looking for a bone they could throw to the union bosses, especially those representing public safety workers. (Rank-and-file public safety workers are more likely to vote Republican than are most other unionized workers.) The emphasis on public sector employees, without direct harm to private sector businesses, may also have made the bill seem more palatable. Provisions that ostensibly bar strikes and decline to authorize

forced union dues in jurisdictions where they aren't already permitted—albeit largely toothless in practice—provide Republicans political cover for voting for the bills.

Regardless of their reasons for voting initially for the legislation, many Republicans have since learned more about the bills' impact and have repudiated their own votes.

Under the Radar

This spring Reid made his most recent try to sneak H.R.980, the House version of the bill, through the Senate.

On May 7, Sen. Chris Dodd (D-Conn.) filed a cloture motion to quick-snap floor action on H.R.980. Days later, Reid filed a second cloture motion to prevent opponents from waging any substantial debate on H.R.980 before it was rushed through the chamber.

By then, however, opponents were already counterattacking. In a May 9 e-mail message to state and local officials of the International Association of Firefighters (IAFF), IAFF General President Harold Schaitberger lamented that opponents

from the National Right to Work Committee and the League of Cities were “working hard to kill this bill.”

Reid apparently realized that allowing debates and votes on right-to-work amendments, even if those amendments failed, would be dangerous for Big Labor senators holding potentially vulnerable seats. Rather than force Democrats like Landrieu and Johnson to jeopardize their 2008 re-election bids by casting high-profile votes in support of forced unionism, Reid decided to pull H.R.980 from the Senate floor.

Congressional Quarterly Today reported on May 30 that Sen. Reid still “intends to call up” H.R.980 for a Senate floor vote prior to this fall's elections. Whether he actually does this may depend on what action is taken by Senate Republicans who oppose the legislation. If they hold firm, Reid will not be able to secure a final floor vote before the November elections without first allowing several right-to-work amendments to be considered and voted on. The most important of these amendments is sponsored by Sen. Jim DeMint (R-S.C.). It would repeal all provisions in

federal labor law that authorize the firing of employees for refusing to pay dues or “agency” fees to an unwanted union.

A Battle For Forced Dues

Reid knows that if a right-to-work amendment like DeMint's comes up for a vote, union officials will oppose it with all their might, and they will order their Senate supporters to oppose it as well. This will, in turn, demonstrate clearly that Big Labor's battle for H.R.980/S.2123 is largely a battle for forced union dues. At that point, it may be difficult for union lobbyists to secure a majority of Senate votes.

However, if Senate Republicans allow a floor vote on the Public Safety Employer-Employee Cooperation Act without considering right-to-work amendments, then the Senate is likely to pass the bill this year.

The fate of our public safety personnel hangs in the balance. In this post-9/11 world, the bill's importance is obvious.

Stan Greer is Program Director and Senior Research Associate for the National Institute for Labor Relations Research in Springfield, Virginia.

www.educationwatch.org

Following the money...

...in the education debate.



Education Watch



SEARCH the online database of over 200 non-profit organizations

DISCOVER who's funding whom, who's behind the policies, and who to watch

KNOW that EducationWatch.org is the educator's, activist's, analyst's, and reporter's most accurate, in-depth information source.

CRC CAPITAL RESEARCH CENTER

1513 16th Street NW,
Washington DC 20036

(P) 202.483.6900
(F) 202.483.6990
1.800.459.3950
www.capitalresearch.org

Volunteer Firefighters

(Continued from page 1)

“permit parties... to negotiate provisions that would prohibit employees from engaging in part-time employment or volunteer activities during off-duty hours.” This only means what it says, that S.2123 does not, in itself, “permit” anti-volunteer contract provisions. But the bill in no way prohibits anti-volunteer contract provisions—either those that already exist or those that IAFF union officials may obtain in the future.

IAFF officials don’t need explicit authorization from S.2123 to demand and obtain anti-volunteer provisions in union contracts. IAFF locals in several states have been negotiating such provisions for years.

Ten years ago, a federal appeals court upheld firefighter union officials’ right to negotiate, with public-safety employers’ acquiescence, contracts barring firefighters from volunteering in their spare time. The case, *Messman v. Helmke*, 133 F. 3rd 1042 (7th Circuit, 1998), was brought by a group of Indiana firefighters who

wished to serve at volunteer fire departments during their off hours, but were prohibited from doing so by the union contract. The court concluded that the city of Fort Wayne “had the power to enter into the CBA [collective bargaining agreement] with the Union, and the provision of the CBA at issue is constitutional on its face.” The would-be two-hatters from Indiana never appealed this decision to the U.S. Supreme Court, and no subsequent federal court ruling has ever contradicted its conclusion.

The Public Safety Employee-Employer Cooperation Act directly threatens two-hatters, volunteer fire departments and citizens who depend on their services because it gives IAFF union officials more “exclusive” bargaining power, not “permission,” to secure anti-volunteer contract provisions and use threats, fines and expulsions to deter the union rank and file from volunteering in their spare time.

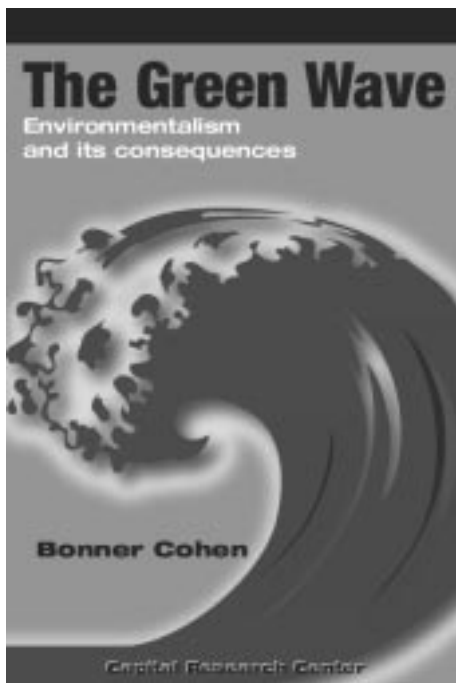
Well aware that their stance against volunteer firefighting is unpopular, IAFF lobbyists have claimed that union officials do not intend to wield H.R.980/S.2123 as a cudgel against two-hatters. But IAFF officials have gone all out to prevent con-

sideration of a pro-volunteer firefighting amendment proposed by Sen. Jim DeMint (R-S.C.).

The DeMint Two-Hatter Amendment would expand the federal mandate in H.R.980 or S.2123 to prohibit all bargaining over contract provisions punishing professional firemen for serving as volunteer firefighters on their own time. Any already-negotiated contract provision barring or penalizing volunteer firefighting would have to be scrapped for a locality and the state with jurisdiction over it to be in compliance with the legislation. And no future negotiations over such provisions would be permitted.

Furthermore, no union with an anti-volunteer constitutional provision, bylaw or other internal policy, and no state or local union affiliated with an international union with such a provision, bylaw or policy, could be recognized as an “exclusive” bargaining agent under the amended legislation.

Please remember Capital Research Center in your will.



MUST READING from
Capital Research Center...

Today’s environmental activists are well-established Washington insiders determined to impose their ideals on the rest of us. In this groundbreaking new book, Bonner R. Cohen, a longtime observer of green do-gooders, traces the rise of environmentalism in America, a movement so thoroughly ingrained in DC culture that the installation of one of its own as Treasury Secretary was barely noticed. Cohen describes how activists created an ideology that now dominates public debate, along with a movement of nonprofit groups that is well-organized and well-funded.

\$14.95

To order, call 202-483-6900
or mail your check and book order to:

Capital Research Center, 1513 16th Street, NW Washington, DC 20036

Labor Notes

NEA Upset by Obama Support for Performance Pay

Presidential candidate Sen. Barack Obama caused a stir last month when he advocated performance pay for teachers while accepting the endorsement of the National Education Association (NEA). The union supports most of Obama's education agenda: more money for teacher salaries, subsidizing college tuition for teachers, amending President Bush's No Child Left Behind law, etc. But according to a report from the Education Intelligence Agency, NEA assembly delegates squirmed when Obama promoted charter schools. He provoked loud booing when he called for giving school districts funds to reward teachers who serve "as mentors to new teachers," "teach underserved areas or take on added responsibility" or "learn new skills or serve their students better or if they consistently excel in the classroom."

SEIU, AFL-CIO Back Health Care Group

The new \$40 million issue-advocacy group Health Care for America Now is funded in large part by the Service Employees International Union and the AFL-CIO. Although the lobby for universal health insurance is officially nonpartisan, the wife of former Sen. John Edwards is a leading spokesperson, and the group has launched a \$25 million advertising campaign in the midst of the 2008 campaigns for the White House and Congress to pressure mostly Republican candidates and legislators who support private-sector solutions to health care concerns.

SEIU Promotes Risky Pension Plans

Last month the Service Employees International Union sponsored "Take Back the Economy" rallies in 100 cities, supporting a largely Democratic economic agenda. Included in the union's wish-list is support for "defined-benefit" pension plans, which SEIU advocates over "defined-contribution" plans for workers. The latter setup, which includes 401(k) plans, allows workers to make regular contributions toward their pension funds—contributions which can be carefully invested and transported from job to job. To the contrary, defined-benefit plans are usually managed by union officers who can steer funds to projects requiring union-only contracts—but not necessarily good investments. The SEIU National Industry Pension Fund, for instance, is underfunded by about 44 percent despite a well-funded plan for SEIU officers, reports Brian Johnson of the Alliance for Worker Freedom.

Union Mandate Included in DRILL Act

Democrats in Congress who are angry about oil company profits and President George Bush's actions to support new drilling along America's coastline, are pushing the DRILL Act (H.R.6515) to force companies to drill on leased federal lands before state-owned coastal properties. Never missing an opportunity to promote unions, the bill includes a provision that mandates "project labor agreements" for covered pipeline projects, effectively requiring union-only labor. Legislators supported the DRILL Act in a 244-173 vote on July 17, but that was insufficient to receive the two-thirds needed under suspension of the House rules.

ALEC Backs Transparency of Union Negotiations

The American Legislative Exchange Council (ALEC) has adopted model legislation designed to help states increase transparency of union negotiations with state and local governments. The ALEC legislation expands state open meetings laws to encompass labor negotiations, under the principle that contracts with public-sector unions are taxpayer-funded. The model bill also requires public disclosure of documents exchanged during collective bargaining negotiations. ALEC endorsed the legislation following a request by the Evergreen Freedom Foundation, which has fought for public disclosure in Washington State. (See *Labor Watch*, June 2008.)