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Subcommittee on Health Education Labor and Pensions

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Statement on the Public Employer-Employee Cooperation Act
H.R. 980

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Mr. Chairman and members of the Committee, I am here today 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. 980. 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. 980.

IPMA-HR is familiar with the Public Sector Employer-Employee Cooperation Act and we participated with several local government groups in presenting testimony in 1999 discussing an earlier draft. 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. 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.

Federalizing Collective Bargaining Is No Guarantee of "Cooperation"

The introduction to H.R. 980 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 states 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. [See page 7 of the audit].

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. 980 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 of January 25, 2007, union membership in the public sector was substantially higher than in the private sector, with 41.9 percent of local government workers belonging to a union. “This group includes several heavily unionized occupations, such as teachers, police officers, and firefighters.”

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. 980, 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.

H.R. 980 is ambiguous because it is not entirely clear what criteria the FLRA would use to determine whether or not a state's laws are "substantially" adequate. We are concerned that in making the determination as to the adequacy of state laws, the legislation would require the FLRA to "consider and give weight, to the maximum extent practicable," to the opinion of the unions. This does not seem to reflect the neutral oversight which this legislation presumes to reflect.

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 2007 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 engagement and satisfaction.

Although supporters of H.R. 980 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 just finished a contentious debate over whether or not minimum staffing levels 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. The fact that the Oregon legislature reached a compromise is significant for two reasons.

First, it argues against the need for H.R. 980 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. 980 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. 980 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. 980 Raises Serious Constitutional Issues

Finally, H.R. 980 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. 980 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. 980.

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.

<u>International Municipal Lawyers Association</u>

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.