INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Statement of

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on

"Standing with Public Servants: Protecting the Right to Organize"

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INTRODUCTION

Good morning Chairwoman Wilson, Ranking Member Walberg and distinguished members of the Subcommittee. Thank you for inviting me to testify about the importance of collective bargaining for fire fighters and emergency medical responders. My name is Tom Brewer and I am President of the Professional Fire Fighters and Paramedics Association of North Carolina. I appreciate the opportunity to appear before you today on behalf of the International Association of Fire Fighters, General President Harold Schaitberger, and the over 316,000 professional fire fighters and emergency medical personnel who comprise our union.

I would also like to thank Chairman Scott for his continued and strong commitment to the issue of organizing and collective bargaining within the labor community, specifically when it comes to public safety. He has always been someone that the fire service can count on to speak to the unique needs we face every day and so I would like to thank him for his efforts today.

I began my career in public service nearly 23 years ago. After graduating from college, I enlisted in the Air Force and served as a Crash and Rescue fire fighter from 1996 to 2000. During my service I was stationed at Shaw Air Force base in South Carolina and served a 6-month deployment in Doha, Qatar. Today I serve the city of Charlotte, North Carolina as a front-line fire fighter and Captain. I also serve as President of my local union, IAFF Local 660 in Charlotte. Every day I report to work at my local fire station, I never question my duty to the citizens of Charlotte. I took an oath, to protect the citizens of my community, a covenant to respond to each citizen and their families request for help. My coworkers and I work every day to protect the lives, health and safety of the citizens we serve. Unfortunately, because I work in North Carolina, I and my brothers and sisters in fire are legally prohibited from bargaining for the basic rights and benefits that are required to do our jobs safely and effectively. North Carolina expressly outlaws public sector collective bargaining and bars public agencies from entering into any sort of binding agreement with their employees. The right to collectively bargain for a contract honors and respects that covenant protecting our firefighters and their families.

I know firsthand what is at stake when workers are not given the opportunity to sit across the table from their employer and discuss the challenges they face on the job, and the resources they need to meet them. Thankfully, there is a solution. The Public Safety Employer-Employee Cooperation Act, HR 1154, introduced by Representatives Kildee (D-MI) and Fitzpatrick (R-PA) will provide a basic set of collective bargaining rights for fire fighters and other public safety workers while protecting the rights of states that currently provide these protections. Under this bill, workers like those in North Carolina will finally have a voice in how to strengthen local public safety and better serve their communities.

COLLECTIVE BARGAINING PROTECTS PUBLIC SAFETY WORKERS AND THE PUBLIC

Over the past two decades of my career, I have come to understand one fundamental aspect to the fire service. The men and women who choose this profession do not see it as an average day-to-day job. It's something much more than that, we see it as a calling. This perspective combined with the dangerous nature of the profession results in tremendous sacrifices. We make the sacrifice of family time to serve grueling 24-hour shifts. We make sacrifices in income and benefits to perform the jobs to which we were called. And yes, we sacrifice our health and sometimes even our lives in service to our communities and their citizens. When fire fighters are denied the right

to collectively bargain, when they are denied the right to sit at a table across from their employer and simply engage in dialogue, these sacrifices are severely undermined.

At its core, the right to organize and collectively bargain is about establishing a mechanism to enable labor and management to work together for their mutual benefit. In states and localities with strong collective bargaining laws, collective bargaining has produced measurable staffing, training, equipment and health and safety improvements, resulting in improved local emergency response capabilities, safer communities, and safer fire fighters.

Collective bargaining allows labor and management to join together and establish safe staffing standards so fire fighters can effectively respond to incidents, to set a safe work schedule allowing fire fighters to effectively manage the physical and mental demands of the job, and to establish health and safety precautions such as installing diesel exhaust systems or clearly established decontamination areas to keep fire fighters healthy and working.

Collective bargaining allows labor and management to join together and ensure fire fighters are well trained and equipped, to ensure sufficient apparatus and station coverage, and to establish professional certification standards for workers, all to ensure the community receives the best possible services.

The people that I serve expect the very best from their fire department, and we work hard every day to meet these expectations. But we are being asked to do our job with one hand tied behind our backs because even as highly trained experts, we cannot confidently and consistently convey basic workplace needs to our employers. Instead, decisions that should be made with both labor and management voices in the room are not. It is as if a fire broke out in a residential home or business and instead of the fire department showing up to do their job, members of the city council show up instead. Without the ability to collectively bargain, voices of the well-trained professional fire fighters, the ones that need to be heard, are being silenced.

EFFECTIVE LOCAL EMERGENCY RESPONSE IS KEY TO NATIONAL SECURITY

One very important and unique aspect of today's fire service is that it operates on multiple governmental levels. No longer is it the case where a fire fighter working in his or her town responds to incidents within the borders of that jurisdiction. Emergency responders regularly respond beyond their own jurisdictions to incidents involving hazardous materials, active shooters, biological and explosive threats, wildland fires, and other local and national security threats - all of which can impact communities not just throughout a state, but across a region.

This new reality illustrates how fire departments throughout states and regions must work together in partnership to meet the safety threats facing communities. The local fire department has evolved into a crucial component of our nation's national preparedness and response system and thus, the federal government has a vital interest in promoting cooperation and partnerships between public safety agencies and first responders. Without an effective local emergency response, homeland security is almost inevitably impaired. Therefore, the federal government has a responsibility to ensure that emergency response at the local level is as effective as possible. Enhancing cooperation between public safety employers and employees through the fundamental right to collectively bargain can help meet that responsibility.

HOW NORTH CAROLINA SUFFERS WITHOUT COLLECTIVE BARGAINING RIGHTS

In North Carolina, a 1959 law banned collective bargaining by public sector employees. For fire fighters, that means that instead of bargaining in good faith with their employer, wages, hours and working conditions are established by the legislature or local government. From a practical perspective, this means that even if employers and employees agree that direct negotiation would be mutually beneficial, fire fighters are forced to lobby elected officials on even the most basic issues. And because lawmakers regularly retire or are elected out of office, we are constantly educating newly-elected officials as to our needs and subject to ever-changing political perspectives.

This dynamic not only negatively impacts workers but impairs our ability to serve the public safely and effectively.

These concerns are not just theoretical. In Boone, North Carolina, fire apparatus is staffed with only two fire fighters. The National Fire Protection Association, which establishes voluntary consensus standards for the fire service, stipulates that fire apparatus should be staffed by a minimum of four personnel to ensure the highest level of safety for workers and the most effective response time for emergencies. Staffing an apparatus with two individuals, as does Boone, is dangerously inadequate and presents all sort of risks to an effective response, to the public, and to the responding fire fighters.

This is happening in places like Boone, North Carolina; fire fighters responding to a house fire cannot safely begin their work once on the scene until a second apparatus arrives, as a minimum of four fire fighters is required to safely and effectively respond to this type of situation. When responding to a car accident, Boone first responders are slower to administer extraction duties and lifesaving procedures such as CPR. Every study within the industry clearly and consistently shows that a four-person apparatus improves the ability to save lives and respond more quickly to emergencies.

This is also happening in Colington, North Carolina. Time and time again the fire fighters of Colington have asked their city council to increase staffing to meet these necessary safety standards, and time and time again they have been turned down, shut out. With collective bargaining, both parties would have a structured process that would allow for this necessary conversation to occur, helping to fix this serious public safety problem.

As another example, in my home of Charlotte, fire fighters have been advocating since 1996 for annual physicals. It should come as no surprise that fire fighters face extreme physical demands on the job, and those demands place our health at risk. Firefighters routinely operate in harsh work environments with excessive heat and smoke, toxic chemicals and extreme physical challenges. In addition to the potential for musculoskeletal injury, respiratory conditions and metabolic disorders, fire fighters are at higher risk for cardiovascular events such as heart attack or stroke, cancer, and mental health challenges.

Especially as it relates to cancer, the Charlotte Fire Department has not been immune to this brutal reality. In 2016 we had three fire fighters die of cancer over a three-month span. Between 2014 and March of 2017 our department has had 41 cancer cases from a pool of just over 1,100 young and healthy workers.

Cancer, cardiovascular disease and other disorders are best addressed when detected early. We know that early detection improves treatment options and outcomes and helps lower costs. This is where the inability to have a conversation with our employer truly impacts lives. For over twenty years, we were unable to convince the city to provide fire fighters with annual physicals. After a constant back-and-forth, education and quite frankly pleading with the powers that be, 2019 will be the first year our department has begun to implement department physicals. If we would have been able to sit down with our employer and present our case, in a structured setting, the benefits and justification for an annual physical, I ask how many hours, dollars and lives could have been saved?

I tell you these examples not just to demonstrate that the cities in question wasted time and taxpayer dollars. The more significant lesson is that politics is a poor substitute for collective bargaining.

The absence of collective bargaining in North Carolina also, unfortunately, negatively impacts our ability to recruit and retain well-trained and experienced fire fighters. In North Carolina, we regularly lose talented professional fire fighters, men and women we invested in training, to other states which provide a cooperative, and thus productive and protected working environment. This type of turnover not only wastes North Carolina resources, it has an unfortunate detrimental effect on local preparedness and response.

PUBLIC SAFETY COLLECTIVE BARGAINING WORKS

Although my fellow fire fighters and I are not protected by the benefits of collective bargaining, I know that it works. This is what makes public safety collective bargaining different from other occupations. The process emphasizes the worker's experience and related health and safety issues to improve the quality of emergency services. I've spoken to fire fighters across the country as a local and state leader, and I have heard firsthand how the ability to sit down with your employer results in safer and more effective work environment.

In Dearborn, Michigan for example, local fire fighters worked alongside city management for over a year through the collective bargaining process to resolve a dangerous understaffing situation resulting in daily brownouts. Fire fighters worked with management and mutually agreed to increase staffing on apparatus and hire 18 additional fire fighters. In exchange, management was able to secure an increase in work hours from 50.4 to 56 per week. The result, safer fire fighters, a more productive work environment, and a safer community, illustrates that the collective bargaining process works.

In Fort Worth, Texas, fire fighters experienced several years of decreasing health insurance benefits for fire fighters and rising costs for the city. Through the collective bargaining process, fire fighters were able to negotiate their healthcare out of the city plan and were placed in a Reference Based Pricing model which would save workers and the city 25 to 30 percent in claim

costs on average. In response, the city of Fort Worth received a guarantee that their contributions to the local Healthcare Trust would be limited to no more than 3 percent. This type of agreement, benefiting both parties mutually, would not have been possible without the right to legally bargain together.

Finally, in Hampton, New Hampshire a private hospital proposed providing limited emergency medical services. The proposal would have provided advanced life support service for only a portion of each day by inadequately trained workers from outside the community. As private employees, these workers retained the right to strike and could have posed a serious threat to continuity of service to the community. Never mind that these workers were not certified or trained as fire fighters.

Working together with the town of Hampton, fire fighters successfully negotiated their own service, providing 24 hours a day, 7 days a week advanced life support services to the area. Because of their ability to sit down and discuss what was necessary with the town, the fire fighters were able to negotiate time off from their regular duties to attend the necessary training and education sessions required to provide the new services. The total classroom and clinical training required over a 1,000 hour commitment from the individual firefighter. Because of the agreed-to contract, and the advanced training received by fire fighters, the town was able to bill insurance providers at higher rates and funds were used to subsidize EMT service response. In the end, the community was able to get 24 hour a day of protection, delivered by highly trained professionals that were under the command and control of the community, due to collective bargaining.

These examples are just a few of the literally thousands of beneficial public safety initiatives that have been achieved through labor-management cooperation.

THE PUBLIC SAFETY EMPLOYER-EMPLOYEE COOPERATION ACT (H.R. 1154)

At this point Madam Chairwoman, I will explain further the details of the Cooperation Act and how it works. First let me say that we do not refer to this bill as the Cooperation Act out of convenience. At the heart of this bill is the objective to promote cooperation between public safety employers and employees, whose relationship is critical to the effective delivery of emergency services in both a local and national response. The purpose of this bill is to allow for 50 state laws that give fire fighters and police officers access to a basic bargaining process that fosters cooperation between workers and their employers. This bill aims to provide the same process that dozens of states already provide to their workers, which has resulted in safer and more secure communities. We do not wish to impose a federal labor relationship law on states, preempt existing state statutes or needlessly interject the federal bureaucracy into local labor relations.

At the heart of the Cooperation Act is an enumerated list which outlines the basic set of collective bargaining rights to which we believe every public safety worker should have access. These include the right to collectively bargain, the right to form and join a union, the right to bargain over working conditions, hours and wages, the right to sign a legally enforceable contract, and the right to binding arbitration to resolve workplace disputes. This last part is important for both sides. Giving workers and employers a process to resolve disputes ensures that the outcomes of the collectively bargained process were determined in a fair, good faith way that both sides can believe

in and adhere to. The Cooperation Act also establishes a private right of action for both the employer and the employee. Aggrieved parties will be given the opportunity to have any lack of enforcement adjudicated in a federal district court. For example, if the FLRA chooses not to enforce portions of the law, then a worker or group of workers can attempt to compel their action through the legal process. This private right of action ensures that once the law is put on the books, it is properly enforced as intended.

To ensure a minimum bargaining process in all 50 states, the bill tasks the Federal Labor Relations Authority (FLRA), an entity with unparalleled expertise in public sector labor relations, to review state collective bargaining laws to see if they meet the minimum standards as outlined above. States that already have effective public safety collective bargaining procedures would not be impacted by this bill whatsoever. The minority of states that do not meet these common-sense standards would have two years and the utmost flexibility, as outlined within the bill, to enact their own public safety laws to meet the emergency services needed in each state. Once state legislation is enacted, the FLRA would review it to determine whether it complies with the minimum standards. The hope of those advocating for HR 1154 is that every state that has not already done so will take this opportunity to enact their own unique state bargaining law for fire fighters and law enforcement workers.

If a state chooses not to enact their own law, the FLRA will administer the responsibilities as outlined within the bill. The FLRA rules would then function as labor law in that state and the agency would serve as the labor board for public safety employers and employees. It is important to note that once a state subsequently adopts a bargaining law for public safety workers that complies with HR 1154's minimum standards, the FLRA's authority immediately dissolves. When provided the choice of enacting their own law or cooperating with the FLRA's involvement, we are confident that states will find ample incentive to enact and administer their own public safety collective bargaining laws.

It should also be noted that HR 1154 prohibits strikes and excludes management from the bargaining process. The bill gives localities the final say in all budgetary decisions, period. Under this bill, localities are not forced to agree to anything. All the Cooperation Act aims to do is give those who sacrifice so much a seat at the table to provide input into how they protect the public.

THE COOPERATION ACT RESPECTS STATES' RIGHTS

One important hallmark of HR 1154 is its flexibility and respect for states' rights. The bill preserves the sovereign right of states to draft their own public safety collective bargaining laws, and the bill has several specific protections to uphold the sovereignty of the state.

First, the bill protects all state laws that meet the common-sense minimum standards under the bill. No state law that already satisfies these baseline expectations will be impacted. Next, the bill protects state right-to-work laws by expressly preserving a states' ability to enforce a law which prohibits employers from requiring union membership or union fees as a condition of employment. This protection outlined in HR 1154 is in no way impacted by the 2018 Janus v. AFSCME decision, which made public sector agency fees unconstitutional. Third, the bill allows states to exempt a locality that has a population of less than 5,000 or that employs fewer than 25 full-time

employees. And finally, the bill protects local laws and ordinances that meet the minimum standards under the bill; no law that goes above and beyond the rights outlined in the Cooperation Act will be impacted. Make no mistake, under HR 1154, local officials still have the final say in how they spend local tax dollars. Communities are still in control of their own priorities and how to best meet them.

I wish to highlight that this bill respects the reality that in some states local jurisdictions have passed and administer their own collective bargaining laws, even if its state has no such law. In these circumstances, if a State chooses not to enact its own compliant legislation, leaving the responsibility for administering the Act to the FLRA, then the FLRA is not authorized to enforce or administer the Act with respect to the jurisdictions already in compliance. The FLRA's authority would be limited to those areas of the State where public safety employees have not been provided these basic rights.

Despite the profound impact that HR 1154 could have on the lives of fire fighters and other public safety workers, the impact on state and local governments would be negligible in most places. The majority of states already appear to be in full compliance with the minimum standards under the bill and would experience no impact at all. Even states that would be affected by HR 1154, the actual change in practice would be minor. For example, in some states bargaining is allowed, but public agencies are prohibited from signing legally binding contracts with unions. As a result, contracts between management and labor are only binding on unions and may be unilaterally voided by the employer at any time. In these areas, HR 1154 would simply require public agencies to keep their promises.

One final aspect of HR 1154 and its relationship to States' rights focuses on its Constitutionality. The Cooperation Act establishes its rights within Congress' authority to regulate commerce which is found in Article 1, Section 8 of the U.S. Constitution. It has been established by numerous precedent-setting court cases that the Federal government can regulate the relationship between public employees and their employers at the local level. This was explicitly proven when the Supreme Court held in Garcia v. San Antonio Metropolitan Transit Authority 469 U.S. 528 (1985) that Congress' authority to regulate commerce includes the authority to apply the wage and hour standards of the Fair Labor Standards Act to State and local governments.

One could argue that HR 1154 is less intrusive on the debate over States' rights since the bill does not dictate wage and hour requirements, but rather establishes the simple right to bargain collectively over such terms and working conditions.

Lastly, HR 1154 does not interfere with a state's sovereign immunity from legal action. The Supreme Court has ruled that individuals cannot sue States in Federal court, unless the State has waived its sovereign immunity. To address this legal reality the bill stipulates that if a State chooses against waiving its sovereign immunity, the FLRA shall have the exclusive power to enforce the Act regarding public safety employees that are employed by the State. When applying this question to employees of local governments, previous Supreme Court decisions have held that sovereign immunity does not apply to local governmental entities such as cities, towns and counties.

CONCLUSION

Since the birth of the labor movement, collective bargaining has been the bedrock foundation upon which it has thrived. The fundamental principle of fairness in decision making is largely responsible for virtually all the reforms that have transformed the way Americans view work. Whether it was securing a safe and logical work week schedule or identifying the proper number of workers needed to do a job effectively and safely, collective bargaining has resulted in the modern-day workplace we have come to know and depend on.

Collective bargaining is overwhelmingly used as a mechanism to enable labor and management to work together for their mutual benefit. The Cooperation Act represents a conversation between public safety employers and employees – a process – not an outcome. Nowhere is this relationship more important than when lives and property are at stake relative to those emergency services that are necessary to protect and secure our communities. Having a voice in the workplace is a fundamental right for fire fighters, just as the public has a fundamental right to rely on effective emergency services.

The Cooperation Act is simple in its design but vital in its objective. While doing everything possible to protect states' autonomy and respecting management, HR 1154 will provide a basic set of rights, providing fire fighters and police officers a good and fair process which will result in good and fair outcomes. When workers have a meaningful role and effective voice in the decision-making process, everyone is better off. Fire fighters are safer, and communities are safer. What could be more necessary than that?

Again, I would like to thank the Subcommittee for the opportunity to testify today and am happy to answer any questions you may have.