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FACT SHEET

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No Truce in IAFF War Against 'Two-Hatters'

Will Congress Hand Big Labor More Power to Punish Professional Firemen Who Also Volunteer?

Five years ago this summer, International Association of Firefighters (IAFF/AFL-CIO) union General President Harold Schaitberger clearly realized he had a problem.

In late 2001 and early 2002, the IAFF hierarchy's campaign to enact the top item on its legislative agenda, the so-called "Public Safety Employer-Employee Cooperation Act," then numbered H.R. 1475 in the U.S. House and S. 952 in the U.S. Senate, seemed to be going well.

In November 2001, IAFF lobbyists had come within just four votes of breaking a Right to Work filibuster and ramming S. 952 through the Senate as an amendment to a major spending bill. And several of the senators who had voted against cloture initially did so on procedural grounds only, so their future votes on S. 952 were very much in doubt. By the spring of 2002, more than half of House members had cosponsored H.R. 1475.

To win House passage of his prized legislation, all Mr. Schaitberger needed to do was persuade 218 congressmen and women to sign a discharge petition to force recalcitrant Speaker Dennis Hastert (R-Ill.) to allow a floor vote. Since, in mid-July 2002, 224 House members had already signed on publicly as cosponsors of the legislation, the discharge petition didn't appear to be a high hurdle.

However, Mr. Schaitberger and his lieutenants were getting more and more questions from members of Congress, many of them already cosponsors of H.R. 1475, regarding international and local IAFF officials' harsh treatment of professional firefighters for serving as volunteer firefighters on their own time. This issue, he deduced, could put passage of the entire bill in jeopardy.

'It Is Like Telling Doctors They Should No Longer Serve in Clinics on Their Own Time, or Be Dismissed From the AMA'

Respectively sponsored by union-label Democratic Congressman Dale Kildee (Mich.) and inexplicably by GOP Sen. Judd Gregg (N.H.), H.R. 1475 and S. 952 would have established a new

federal mandate imposing union "exclusive representation" (monopoly bargaining) over state and local firefighters as well as police and other public-safety employees.

Had this legislation been enacted, it would have largely usurped the authority of each state to set its own policies regarding the unionization of state and local government employees in general and public-safety officers in particular.

Unfortunately, elected officials in a number of states have caved into Big Labor demands by enacting state laws empowering union officials to seize monopoly-bargaining control over public-safety employees. However, roughly half of the 50 states have so far either refused completely to grant union bosses monopoly control over public-safety employment, or have acquiesced to a relatively limited form of "exclusive" bargaining.

It has long been a goal of government union officials to wield broad monopoly-bargaining power over public-safety officers in every state across the nation. To help union officials meet that objective, Mr. Kildee has introduced police/fire monopoly-bargaining legislation in every Congress since the mid-nineties, and Mr. Gregg sponsored such legislation in 2001, 2003 and 2005.

But from the time the Kildee bill received its first House hearing in 2000, members of Congress have been publicly expressing their concerns about Article XV of the IAFF constitution, which states that a firefighter may be reprimanded, fined, removed from union office, suspended, or expelled for acquiring or maintaining membership in any "rival" organization, "including volunteer fire departments or associations."

At a May 9, 2000 hearing on the Kildee bill conducted by the House Education & the Workforce Committee's Employer-Employee Relations Subcommittee, pro-Right to Work Rep. Cass Ballenger (R-N.C.) grilled then-IAFF chief lobbyist Frederick Nesbitt both about Article XV and about how the Kildee bill would help the union hierarchy impose even harsher penalties against firefighters who defied the anti-volunteer policy.

And two years later, it wasn't just Right to Work stalwarts like Mr. Ballenger who were raising such questions. On February 27, 2002, Rep. Curt Weldon (R-Pa.), a frequent ally of Organized Labor and a cosponsor of the Kildee bill during the late nineties, rose up on the House floor to denounce the IAFF hierarchy's anti-volunteer policy, a recent international union resolution reaffirming that policy, and actions by various IAFF locals implementing that policy:

> For the past 16 years that I have served in this body I have tried to focus attention on the plight of the nation's fire and emergency service providers. Across this country we have fought for their interests. We have fought for the career and volunteer firefighters in 32,000 departments. . . .
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> [T]he good will we have developed is currently being undone by a resolution passed by the International Association of Firefighters, good friends of mine, supporters of mine, that tells their membership they can no longer volunteer in the course of serving the communities where they live. So a firefighter in the District of Columbia who lives in suburban Maryland or Virginia is no longer allowed on his own free time to serve the communities where he lives. If he wants to do that, he must give up his union card.

> Madame Speaker, this is like saying that teachers, and I was a teacher for seven years, should withdraw from the teacher's association if they want to tutor poor kids on weekends or after school . . . . It is like telling doctors that they should no longer serve in clinics on their own time, or be dismissed from the AMA.

'Concern Has Been Raised That Our Organization Engages in Actions Against Volunteer Fire Fighters'

At the same time as Mr. Weldon and other normal allies of union officials were sounding the alarm about the punitive actions of IAFF local bosses in the Washington, D.C., metropolitan area and elsewhere against "two-hatters," paid union firefighters who volunteer as unpaid firefighters in their local communities during their days off work, the National Right to Work Committee was publicly pointing out that the Kildee/Gregg legislation would greatly exacerbate the abuses.

Once union officials' monopoly power to negotiate firefighter contracts was guaranteed by federal law, the Committee noted, IAFF officials would be free to push for contracts prohibiting union members and nonmembers alike from volunteering on their own time, and authorizing the dismissal of firefighters who refused to submit to the ban. The end results would certainly be to shut down thousands of volunteer fire departments across the country and, the IAFF hierarchy obviously calculated, at the same time add to the ranks of professional firefighters forced to accept the IAFF as their monopoly-bargaining agent and typically also forced to pay union dues or fees as a job condition.

Many members of Congress who would otherwise have been willing, even eager, to federalize public-safety union officials' monopoly-bargaining privileges began letting IAFF union lobbyists know that they would not do so if their constituents recognized the Kildee legislation as a potentially lethal, albeit indirect, attack on two-hatters and volunteer fire departments.

To revive prospects for House passage of the Kildee bill, Mr. Schaitberger had to address the volunteering issue. Given the fact that the IAFF brass's anti-volunteer stance was enshrined in the union constitution and had been reaffirmed in Resolution 43 at the IAFF's 2001 convention, Mr. Schaitberger couldn't credibly claim that IAFF officials had nothing against two-hatters and would take no action against them. But, as it turned out, he could make a dishonest and incredible claim to that effect.

In a letter to Congressman and H.R. 1475 cosponsor Felix Grucci (R-N.Y.), dated July 25, 2002, Mr. Schaitberger acknowledged that in recent months the IAFF had "received several inquiries regarding our policy on union members who also hold affiliation in volunteer fire departments." He continued, altogether disingenuously:

> Specifically, concern has been raised that our organization engages in actions against volunteer firefighters that would be injurious to these individuals' employment status, and job security with their government and/or fire department position. . . . [T]he IAFF does not support actions that would jeopardize the ability of a career firefighter to obtain or maintain active membership in a volunteer organization. This is a personal choice.

In reality, as noted above, the IAFF's Resolution 43, adopted just a year prior to Mr. Schaitberger's letter to Mr. Grucci, had not only condoned, but encouraged, such actions against two-hatters serving as professional firefighters in Prince George's County, Md., and as volunteers in nearby communities.

Furthermore, as the National Volunteer Fire Council (NVFC) pointed out in a press release responding to the letter, at the very time Mr. Schaitberger wrote it the NVFC had recently received reports from concerned firefighters not just in Maryland, but also in Virginia, New York, California, Oregon, Washington State, Florida, and Ontario, Canada, regarding threats by local IAFF officials to punish them if they continued volunteering in their spare time.[1]

As shall be seen shortly, Mr. Schaitberger and other top IAFF officials had no intention whatsoever of actually calling a truce in their war against two-hatters. Rather, they clearly hoped that with the letter they could quell the concerns of erstwhile supporters of the Kildee bill like Mr. Weldon without giving up anything substantive.

Volunteering Is a 'Personal Choice'
That 'Can Have Serious
Consequences Under Our Constitution'

Unfortunately for Mr. Schaitberger, many professional firefighters who had long been volunteering on their own time, as well as many local IAFF officials who had been threatening and imposing penalties against such firefighters, learned about his letter to Mr. Grucci and took it seriously.

Consequently, within less than two months Mr. Schaitberger felt compelled to send a "clarification" to the presidents of all IAFF-affiliated state and local unions. In this "clarification," dated September 20, 2002, he expressed his dismay that his letter to Mr. Grucci had been:

> . . . used and misused by those who wish to create difficulties for IAFF locals exercising their rights under our Constitution and By-Laws in dealing with IAFF members who choose to volunteer. I regret that, as prepared and sent, the Grucci letter has caused serious concerns for some of our affiliates. I want to set the record straight. . . .
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> [The letter] did not accurately reflect the union's position or my position regarding this matter and created more problems for some of our affiliates, [rather] than resolve the narrow issues it was intended to address. . . . In retrospect, it was an ill-advised effort to mollify our opponents, and the letter should never have been sent. . . .
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> The IAFF Constitution makes it clear that IAFF members can be subject to charges and internal discipline if they serve as volunteers. . . .
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> Let me be as clear as possible. We as a union, by Convention actions, do not represent or condone volunteer, part-time, or paid on-call fire fighters. This is also my personal position, as it has been from the time I first joined the IAFF. It remains my position today

[1] "IAFF President: Volunteering 'a Personal Choice,'" August 14, 2002 NVFC press release. As this fact sheet goes to press in August 2007, the press release may still be found at http://www.nvfc.org/news/hn_iaff_presidents_view.html in the archives of the NVFC web site. This page also includes a copy of Mr. Schaitberger's letter to Rep. Grucci.

> as your General President, and I have reiterated this position to affiliate leaders on a number of occasions. . . .
>
> It is time to reaffirm the provisions of our Constitution on this critical issue to those both inside and outside of our organization. Although an IAFF member may make a personal choice to join a volunteer fire department, that personal choice is one that can have serious consequences under our Constitution, including the loss of IAFF membership.[2]

With this letter, Mr. Schaitberger established beyond a shadow of a doubt not only that the IAFF hierarchy fully supports reprisals by IAFF locals against two-hatters, but also that he and other top IAFF leaders are willing to lie brazenly about their stance in situations where such lies might be convenient for advancing their legislative agenda.

Only Politicians Who Want to Be Fooled Can Possibly Accept Current IAFF Reassurances About Kildee Bill

And although Mr. Schaitberger's letter to presidents of IAFF affiliates spoke only of penalties against IAFF members who join volunteer fire departments, IAFF local officers in localities like Ft. Wayne, Ind., West Allis, Wisc., and all the major cites in Connecticut have in recent years wielded their monopoly-bargaining power to negotiate contract provisions that prohibit all professional firefighters, union members and nonmembers alike, from volunteering.[3]

The provision in Hartford, Conn., for example, subjects all of the city's firefighters to "discipline" – including discharge for those who aren't swayed by less severe "discipline" – for "responding to department calls as an active member of . . . [a] volunteer fire department."

Connecticut volunteer fire companies are currently finding it difficult to fill positions, largely, it appears, due to union contracts barring volunteer firefighting. And just this February, the legislative director of the IAFF's statewide affiliate in the Nutmeg State, the Uniformed Professional Fire Fighters Association of Connecticut, was the only witness at a state Capitol hearing to oppose legislation (H.B. 6927) that would have stricken anti-volunteer provisions from union contracts.[4]

Although H.B. 6927 was cosponsored by a bi-partisan coalition of more than 60 legislators and was favorably reported out of five separate committees in the Connecticut House of Representatives, the legislation ultimately died without a floor vote. State and local officials of the IAFF, undoubtedly with Mr. Schaitberger's full support, succeeded in blocking this measure.

In view of the fact that IAFF locals in Connecticut are now openly wielding their monopoly-bargaining power to prevent volunteer fire departments throughout the state from recruiting firefighters, the testimony of Kevin O'Connor, assistant to the general president of the IAFF, in support of the Kildee bill before a U.S. House panel this spring was brazen, even by the standards of IAFF officials.

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[2] As this fact sheet goes to press, an NVFC press release featuring a copy of Mr. Schaitberger's letter to IAFF affiliates is still available at http://www.nvfc.org/news/hn_iaff_presidents_consequence.html in the NVFC archives.

[3] "NVFC Position on the Right to Volunteer," August 4, 2004 NVFC press release.

[4] See http://www.cga.ct.gov/2007/jfr/h/2007HB-06927-R00PS-JFR.htm on the web site of the Connecticut General Assembly.

The Kildee bill – now H.R. 980 – would, as we have seen, help IAFF officials secure monopoly-bargaining privileges in many jurisdictions where they don't already have them. And IAFF officials have repeatedly taken advantage of their monopoly-bargaining privileges to insert anti-volunteer provisions in union contracts.

Nevertheless, Mr. O'Connor insisted, H.R. 980 "does not infringe on the rights of volunteer fire fighters. . . . We . . . added language expressly addressing concerns raised by . . . volunteer fire fighters to make sure the [Kildee bill] in no way conflicted with their goals."[5]

If possible, Mr. O'Connor was being even more deceitful in his testimony than Mr. Schaitberger was when he claimed in July 2002 that the IAFF "does not support actions that would jeopardize the ability of a career firefighter to obtain or maintain active membership in a volunteer organization."

The only members of Congress who could possibly be fooled by Mr. O'Connor's testimony are those who are so beholden to the union political machine, or so terrified of it, that they have decided they want to be fooled.

Zero Public-Safety Workers Are Protected by H.R. 980 Provision That Supposedly 'Protects Volunteers'

The language that Mr. O'Connor claims "addresses" concerns raised by volunteer firefighters is found in Sec. 8(a)(4) of H.R. 980:

> Nothing in this Act or the regulations issued under this Act shall be construed . . . to permit parties subject to the National Labor Relations Act . . . to negotiate provisions that would prohibit an employee from engaging in part-time employment or volunteer activities during off-duty hours.

As a practical matter, no employees whatsoever are protected by this provision. As it clearly states, it affects only "parties subject to the National Labor Relations Act." State and local public-safety employees are government employees and not subject to the NLRA.

Under H.R. 980, if a state passes a new public-safety labor law to comply with the federal mandate for monopoly bargaining, the public-safety employees will be subject to state law, not the NLRA. And if a state without monopoly bargaining refuses to pass a new public-safety labor law, H.R. 980 provides that the Federal Labor Relations Authority, not the National Labor Relations Board, will regulate labor-management relations for that state's public-safety employees. Those employees will be subject to regulations issued by the FLRA, not the NLRA.

Thus, the provision in H.R. 980 that supposedly protects public-safety employees' right to volunteer won't protect them at all. Even the small number of private-sector firemen who are under the NLRA won't be protected by this provision, because H.R. 980 as a whole only affects state and local public-sector employees.

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[5] See esp. pp. 7-8 of the testimony at http://edworkforce.house.gov/testimony/060507KevinOConnorTestimony.pdf on the House Education and Labor Committee web site.

In short, the provision that supposedly protects volunteer activity is a sham. Given IAFF officials' established record of installing anti-volunteer provisions in union contracts wherever they can, H.R. 980 presents a serious threat to firefighters' freedom to volunteer on their own time.

Supporters of H.R. 980 Should At Least Be Candid About the Volunteer Firefighter Issue

It may be too much to expect Harold Schaitberger and Kevin O'Connor to admit that a key reason they want H.R. 980 enacted is that it would enhance their ability to crack down on two-hatters and, ultimately, shut down thousands of volunteer departments. But American citizens have a right to expect more candor from their elected officials.

The IAFF lobbying machine was able to steamroll H.R.980 through the House this summer so quickly that proponents in that chamber were able to dodge questions about the impact the legislation would have on the hundreds of thousands of volunteer fire fighters across the country. The NVFC estimates that roughly half of these volunteers are also professionals, who donate their spare time to serve their communities.

By mid-September, when this legislation could very well come to the Senate floor, senators will have had far more time than their House counterparts did to reflect on the threat it poses to volunteer fire departments and the utter meaninglessness of Sec. 8(a)(4).

When H.R. 980, or companion legislation with similar or identical provisions, comes to the Senate floor, proponents should at least acknowledge that it will cause firefighter union contracts with anti-volunteer provisions, of the sort that are already typical in Connecticut, to proliferate across the country.

And then the pro-H.R. 980 senators can try to explain why that's an acceptable price to pay in order to institute a federal mandate for public-safety monopoly bargaining.

Nothing here is to be construed as an attempt to aid or hinder the passage of any bill before Congress.