



# National Right to Work Committee

A COALITION OF EMPLOYEES AND EMPLOYERS

NATIONAL HEADQUARTERS BUILDING

October 23, 2007

The Honorable Joe Sestak  
U.S. House of Representatives  
1022 LHOB  
Washington, D.C. 20515  
Sent via Fax: 202-226-0280

Dear Congressman:

I am glad I recently had the opportunity on the Fox News Channel to debate with you the impact of pending legislation in Congress that would impose a new federal mandate authorizing union "exclusive" bargaining over state and local public-safety employees in all 50 states.

As you know, the National Right to Work Committee and its 2.2 million members are determinedly resisting this legislation (H.R. 980 and S. 2123) on principle.

Committee members oppose this legislation because, in states where public-safety "exclusivity" isn't currently authorized by law, it hands union officials monopoly power to negotiate the contracts of public-safety employees who haven't joined the union and want nothing to do it.

Committee members also oppose H.R. 980 and S. 2123 because they would widen the scope of public-safety union monopoly bargaining in many states that already statutorily authorize this practice.

Congressman, I know from the record you've established since you joined Congress this January as well as from the comments you made during our FNC encounter this month that you disagree with Right to Work supporters about union monopoly bargaining and actually think it's a good thing.

And I won't try to change your mind about the basic issue of "exclusive" union representation in this letter.

Instead, I'd like to follow up with you on our October 11 discussion regarding one specific question about the pending legislation:

Would it help International Association of Fire Fighters (IAFF) union officials get the tens of thousands of professional firefighters who currently volunteer at their local fire departments on their own time punished or fired if they continue to serve the public interest in this way?

There's simply no denying the fact that the IAFF hierarchy is virulently hostile toward "two-hatters," unionized firefighters who volunteer as unpaid firefighters in their local communities during their days off work.

The IAFF constitution itself explicitly 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."

Moreover, in recent years, officers of IAFF locals in a number of localities, including, for example, every major city in Connecticut, have wielded their "exclusive" bargaining power to negotiate contract provisions that bar union members and nonmembers alike from volunteering.

I understand from our discussion that, while we have fundamentally different beliefs regarding "exclusive" bargaining and compulsory union "agency" fees, you and I agree that Congress should do nothing that would exacerbate IAFF officials' harassment of "two-hatters."

When the FNC moderator asked you if you believed volunteer fire departments undermine the interests of professional firefighters, a claim repeatedly made by IAFF General President Harold Schaitberger and other IAFF officials, you replied: "Absolutely not."

You also commended "two-hatters" as "double the citizen: They do the job and then volunteer."

You nevertheless voted for H.R. 980, and back S. 2123, the slightly different companion legislation now pending in the Senate. You contended during our debate that the latter measure would not in any way help IAFF officials punish or harass "two-hatters."

And you even went so far as to say that S. 2123, if enacted, would actually require the elimination of anti-volunteer

provisions that are currently included in contracts negotiated by IAFF local officials in states such as Connecticut, Indiana and Wisconsin.

Congressman, I don't doubt that you believed what you said when you said it, but my legal counsel and I have looked at S. 2123, and your description of the provision addressing volunteer firefighting simply isn't accurate.

Sec. 8(a)(5) of S. 2123 states: "Nothing in this Act shall be construed" to "permit parties . . . to negotiate provisions that would prohibit an employee from engaging in part-time employment or volunteer activities during off-duty hours."

This only means what it says, that S. 2123 doesn't, in itself, "permit" anti-volunteer contract provisions. But Sec.8(a)(5) in no way prohibits anti-volunteer contract provisions -- either those that already exist or those that IAFF union officials may obtain in the future.

The fact is, IAFF officials don't need explicit authorization from S. 2123 to demand and obtain anti-volunteer provisions in union contracts.

As you acknowledged during our debate, IAFF local officials in several states have already been negotiating such provisions for years.

And nearly a decade 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. 3<sup>rd</sup> 1042 (7<sup>th</sup> 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 that anti-volunteer contract provisions are constitutional and legal unless expressly prohibited by federal or state law.

S. 2123 directly threatens "two-hatters," volunteer fire departments, and citizens who depend on their services because it gives IAFF union officials more monopoly-bargaining power, not "permission," to secure anti-volunteer contract provisions. "Permission" they already have.

Furthermore, by imposing "exclusive" union bargaining on public-safety employees in many communities that don't have it now, S. 2123 would enhance IAFF union officials' power to use threats, fines, and expulsions to deter the union rank and file from volunteering in their spare time.

Supporters of volunteer firefighting have ample reason to be deeply skeptical of reassurances by IAFF union lobbyists that they intend to address their concerns.

Ever since legislation instituting federally mandated union "exclusive" bargaining over state and local public-safety employees was first introduced in Congress during the late nineties, such concerns have been raised.

And time and again, IAFF spokesmen have publicly claimed to have met such concerns in the latest version of the legislation -- only to admit subsequently, explicitly or tacitly, that they hadn't.

Just this spring, Kevin O'Connor, assistant to the general president of the IAFF, testified to a House panel regarding H.R. 980, the version of the bill sponsored by Congressman Dale Kildee (D-Mich.) that was then pending in the chamber:

"We . . . added language expressly addressing concerns raised by . . . volunteer firefighters to make sure the [Kildee bill] in no way conflicted with their goals."

But just a few months later, an IAFF representative reportedly privately met with a representative of the National Volunteer Fire Council who let him know that H.R. 980 did not protect volunteer firefighting at all. Union officials then agreed to "fix" the bill in the Senate.

Of course, as we've already seen, in reality S. 2123 still doesn't "fix" the problem of anti-volunteer contract provisions.

Frankly, I doubt that IAFF General President Harold Schaitberger or other IAFF officials are genuinely interested in passing legislation that would not help them win their war against "two-hatters."

But I assume you and other congressmen and senators who voice support both for a monopoly-bargaining mandate and for professional firefighters' freedom to volunteer in their spare time are less skeptical about IAFF officials' motives.

And before long you will likely have an excellent opportunity to find out whether or not Mr. Schaitberger and his lieutenants are now finally ready to call a halt to their attacks on volunteer firefighting.

Since S. 2123 differs slightly from H.R. 980, the House will probably have to vote on a conference bill before the federal public-safety "exclusive" bargaining mandate can go the White House.

At that time, you can move to send the bill back to conference committee where it can be amended to provide genuine protection for "two-hatters."

A truly effective amendment would expand the federal mandate in this legislation 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 on 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.

If I am wrong about Mr. Schaitberger's motives, then he and IAFF lobbyists, as well as the House leadership, will certainly then agree to have S. 2123 sent back to conference committee so that a pro-volunteer firefighting amendment with real teeth can be attached to the bill.

But if I am right, IAFF lobbyists and the House leadership will certainly oppose your motion with all their might, and it will not succeed.

Then you and dozens of likeminded House members will have to choose between your support for expanding public-safety "exclusive" union bargaining nationwide and your professed goal

of protecting the interests of "two-hatters" and volunteer fire departments.

Please feel free to call me at 703-321-9820 if you need additional information or clarification about something.

Sincerely,

A handwritten signature in blue ink that reads "Mark Mix". The signature is written in a cursive style with a large initial "M" and a stylized "M" at the end.

Mark Mix  
President