

# The Future of Law Enforcement in the United States of America

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## **A Complex Structure**

In order to have a discussion on the future of policing in the United States it is necessary to understand the structure of US law enforcement agencies. Law enforcement agencies in the United States are inconsistent in that there is no uniform organizational structure or guideline from one jurisdiction to the next as to the formation or operation of the individual agencies. While we do have law enforcement officers at the federal level, the United States does not have a national police force in the same sense that many other countries do. We have a vast range of law enforcement agencies at every level of government. There is not even a consensus as to how many police agencies exist in the United States. As the Criminal Justice Department of Austin Peay State University explains:

Counting the actual number of police agencies is a fine art, and some counting methods result in a total of well over 20,000 agencies, with indeed, some counts around 23,170 and others much higher. One problem is how you count state police agencies. Some states have a state police barracks in almost every county, and these can be counted separately since they report crime directly into the FBI's UCR system with a unique Originating Reporting Agency Identifier (ORI). Other states, like Florida, have a vast amount of special purpose state police agencies, such as those devoted to wildlife, fire, and alcoholic beverage control (427 at last count). In other places, at other levels (Texas, for example), constables are counted as a separate ORI from local government. Regional special purpose task forces (such as for drug, gang, or terrorist control) exist at all levels of government, [and] are constantly being created...<sup>1</sup>

Agencies at the federal, state, and local level operate in a largely independent and autonomous fashion. State and local laws governing law enforcement may vary widely from one area to another, and the rights afforded to police officers in one agency may not be available to officers in a neighboring agency based on local ordinance, collective bargaining agreements, or the whim of the commanding officer. The varying rights, duties, and resources of these agencies are also influenced by the size of the agency. While some are quite large, such as the Los Angeles Police Department with over 9,000 officers or the Chicago Police Department with over 13,000 officers<sup>2</sup>, there are tens of thousands of agencies scattered throughout the country with fewer than ten sworn law enforcement officers on staff.

Given the diverse range of circumstances found among American law enforcement agencies, it is difficult to make sweeping generalizations about what the future holds for policing in America; however there are some forces that concern us all. The recent economic downturn has been a major catalyst for change (largely negative), and we expect to feel the impact of this for the foreseeable future. On the more optimistic side, we expect to soon see the passage of federal legislation granting the right of law enforcement officers at every level across the nation to collectively bargain on matters of wages, benefits, and other working conditions. Currently Collective Bargaining Rights are granted by a local community or in a number of cases on a statewide basis.

## **Economic Consequences**

Few industries in the United States have been able to survive the recent economic disaster unscathed, and law enforcement has been no exception. The US is faced with frequent mass layoffs and a staggering unemployment rate the likes of which have not been seen in this country in decades. In 2009 the Gross Domestic Product of the United States experienced the largest single-year decline of any year since The Great Depression. Economists are predicting that we will not experience the sort of recovery that we have from past recessions, causing the unemployment problem to persist much longer than it has in the past. According to economists at the W. P. Carey School of Business at Arizona State University, the “economic forecast reflects this somber assessment... While 3.0 percent growth of real GDP for this year and next is not a "gloom and doom" outlook, it is consistent with expectations that consumers will remain cautious, business will be slow to expand plant, equipment and hiring in the face of excess capacity, and state and local governments will remain strapped for funds.”<sup>3</sup>

These budgetary deficits experienced by state and local governments have created a tense situation for our public employees. While public safety employees have largely been excluded from some drastic measures (such as the recent proposal by the mayor of Los Angeles to close all non-essential government offices two days a week until they come up with a solution to replenish the city’s general funds<sup>4</sup>) police, firefighters, and other essential public safety workers have been asked to make sacrifices as a result of budgetary shortfalls. Despite our best efforts, there are Law Enforcement Officers across the country that are losing wages, losing benefits, even losing their jobs as a result of the

economic crisis. Below are just a few examples of the concessions some departments have been forced to make:

- **Bridgeport, Connecticut** – Officers accepted a two year wage freeze in addition to deferments of holiday and vacation pay and a reduction of take-home car privileges. With an all-time low staffing level of only nine full-time officers, the force is stretched thin while crime remains at the level it was when they were fully-staffed.
- **San Bernardino, California** – Officers have had to pick up an additional \$400 in medical insurance and forfeit their uniform allowance.
- **Modesto, CA** – Officers agreed to take 32 hours of furlough time each to avoid layoffs.
- **New Castle, Pennsylvania** – Officers agreed to a one year wage freeze. Management also won the right for the first time to use part-time officers (who are not included in the bargaining unit) at its sole discretion.
- **Mahoning County, Ohio** – Deputies accepted a 20% wage decrease in addition to the loss of certain other income (such as hazardous duty pay) in order to avoid layoffs in the last fiscal year. Permanent layoffs are likely this year as the department budget has been drastically reduced.
- **Santa Rosa, CA** – Police and firefighters agree to forgo raises for two years, forfeiting a total of more than \$4,000,000.
- **Toledo, Ohio** – The city laid off 75 officers out of a force of only 610, worsening what was already one of the worst rates of law enforcement officers per capita in the country for an urban area. The city has since recalled 29 officers using Federal grant money; however 46 officers are still laid off.
- **Tulsa, Oklahoma** – Despite repeated attempts by the FOP to offer cost-saving alternatives, the mayor has eliminated 89 sworn positions.

### **Legislation Impacting Law Enforcement**

The right to bargain collectively over hours, wages, and working conditions is at this time denied to many law enforcement officers and other public safety employees across our country. The FOP has been working diligently in support of House Resolution 413, the "Public Safety Officers' Employer-Employee Cooperation Act,"<sup>5</sup> which would finally recognize the right of these employees to bargain collectively for improved working conditions while fostering a better relationship with their employers. The objective here is not to have the federal government involved in regulating labor-

management relationships, but to spur the development and enactment of good state labor laws which will improve the safety of all public safety officers and the delivery of emergency services to our citizens in a safer, more cost effective way.

This bill, which specifically prohibits strikes and lockouts, will recognize the rights of law enforcement officers, firefighters, and other public safety officers to bargain collectively, without undermining existing state collective bargaining laws. Under H.R. 413, the Federal Labor Relations Authority (FLRA) will be directed to determine whether state law provides public safety officers with the right to form and join a union and bargain collectively with public safety employers over hours, wages, and conditions of employment. Though a state may exempt certain smaller agencies from its state law, if it does not "substantially provide" the rights set forth in this bill within two years or "the date of the end of the first regular session of the legislature of that State that begins after the date of the enactment of this Act," then the FLRA would be empowered to govern the labor-management relationship.

In addition to this landmark collective bargaining legislation the FOP has been tirelessly advocating for the adoption of legislation creating a "bill of rights" for law enforcement officers: H.R. 1972, the "Law Enforcement Officer's Procedural Bill of Rights Act of 2009."<sup>6</sup> Currently in committee, this bill is intended to address the need to create a uniform minimal level of procedural due process for police officers. Law enforcement officers have one of the toughest jobs in the world. Every day, police officers put their lives on the line – life and death decisions are part of the job description. Because of the enormous responsibility that comes with the badge, law enforcement officers are held to a much higher standard of personal and professional conduct – as well

they should be. This higher standard and increased visibility renders police officers vulnerable to false accusations from the criminal element and others in society whose sole motivation in making these allegations is to disrupt law enforcement activities. In the United States there are legal protections afforded its citizens from potential improper police procedures, in addition to a wide array of departmental procedures put in place by the individual agencies that dictate the conduct of officers in the course of duty.

Unfortunately, many of our law enforcement officers are not granted the same rights and dignities as other citizens should they be accused of wrongdoing. Rank-and-file police officers are sometimes subjected to abusive and improper procedures and conduct on the part of the very departments or agencies they serve. In some instances, the basic rights that most citizens or employees take for granted are either denied or simply unavailable to our police officers. In a startling number of jurisdictions throughout this country, law enforcement officers have *no* procedural or administrative protections whatsoever; in fact, they can be, and frequently are, summarily dismissed from their jobs without explanation.

Officers who lose their careers due to administrative or political expediency almost always find it impossible to find new employment in public safety. An officer's reputation, once tarnished by accusation, is almost impossible to restore. The need for a minimal level of procedural protections for police officers accused of administrative wrongdoing, the gravity of the potential harm to officers created by the lack of uniform safeguards, and the patently unfair disparity in rights afforded criminal suspects *but not police officers* are the reasons we are working to encourage our lawmakers to enact this legislation to create a uniform minimal level of procedural due process for police officers.

While many states have enacted statutes to address the rights of police officers, the cumulative result of these laws has been a confusing jumble with the "rights" protected sometimes dependent on either the classification or location of the officer involved. Further, some state statutes permit localities to "opt out" of the provisions guaranteeing public safety officers basic procedural protections. Federal legislation would establish a minimum level of procedural protections available while at the same time making the law on this issue unambiguous. The legislation that has been proposed under the "Law Enforcement Officer's Procedural Bill of Rights Act of 2009" would guarantee law enforcement officers the following basic rights:

- Law enforcement officers shall, if disciplinary action is expected, be notified of the investigation, the nature of the alleged violation, and be notified of the outcome of the investigation and the recommendations made to superiors by the investigators;
- Questioning of a law enforcement officer should be conducted for a reasonable length of time and preferably while the officer is on duty unless exigent circumstances apply;
- Questioning of the law enforcement officer should take place at the offices of those conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location;
- Law enforcement officers will be questioned by no more than two investigators, and he or she shall be informed of the name, rank and command of the officers conducting the investigation;
- Law enforcement officers under investigation are entitled to have counsel or any other individual of their choice present at the interrogation;
- Law enforcement officers cannot be threatened, harassed or promised rewards to induce the answering of any question;
- Law enforcement officers are entitled to a hearing, with notification in advance of the date, access to transcripts and other relevant documents and evidence generated by the hearing and to representation by counsel or another non-attorney representative at the hearing;
- Law enforcement officers shall have the opportunity to comment in writing on any adverse materials placed in his or her personnel file; and
- Law enforcement officers cannot be subject to retaliation for the exercise of these or any other rights under Federal, State or local law.

The legislation also establishes an effective means for the receipt, review and investigation of public complaints against law enforcement officers that is fair and equitable to all parties.

The proposed bill does not protect the jobs of "bad cops" or officers unfit for duty. Nor does it apply to allegations of minor violations of internal departmental rules or regulations or employment-related performance of officers, thus preserving the discretion of the individual agency in disciplining its employees. This measure does not afford police officers any greater rights than those possessed by other citizens; it simply reaffirms the existence of those rights in the unique context of the law enforcement community.

### **Looking Toward the Future**

Like most countries, the United States has a hard road ahead as we move toward economic recovery. There will be more setbacks. Governments will continue to attempt to roll back benefits and lay off employees wherever they can, but the Fraternal Order of Police stands ready to fight for our membership and for all of our country's law enforcement officers. With the help of the expected passage of our federal legislation, we will see our way through this difficult time and emerge on the other side with a stronger and more united community of law enforcement who will be able to serve knowing that their rights are valued and protected as they themselves protect our citizens every day.

## Works Cited

<sup>1</sup> O'Connor, T. "Police Structure and Organization: A State-By-State Guide to Federal Agencies, State/County/Municipal, and The Table of Links." Austin Peay State University. March 26, 2010 <<http://www.apsu.edu/oconnort/polstruct.htm>>.

<sup>2</sup> The Bureau of Justice Statistics, "Census of State and Local Law Enforcement Agencies, 2004". U.S. Department of Justice. April 2010 <<http://bjs.ojp.usdoj.gov/content/pub/pdf/cslllea04.pdf>>.

<sup>3</sup> McPheters, Lee. "No "Great Recovery" from the Great Recession". Arizona State University, W.P. Carey School of Business March 17, 2010.

<sup>4</sup> Willon, Phil, et al. "L.A. mayor calls for temporary shutdowns of some agencies". Los Angeles Times April 7, 2010.

<sup>5</sup> Steve Young Law Enforcement Legislative Advocacy Center, "Collective Bargaining for Public Safety Employees". National Fraternal Order of Police. March 26, 2010 <<http://www.fop.net/legislative/issues/bargain/index.shtml>>.

<sup>6</sup> Steve Young Law Enforcement Legislative Advocacy Center, "Due Process Rights for Law Enforcement Officers". National Fraternal Order of Police. March 26, 2010 <<http://www.fop.net/legislative/issues/leobr/index.shtml>>.