

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Friday, June 26, 1981 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Conference Room, County Office Building, Rockville, Maryland, at 9:45 A.M. on Friday, June 26, 1981.

PRESENT

Ruth Spector, President	Esther P. Gelman
Neal Potter	Scott Fosler
Rose Crenca	Michael L. Gudis
David L. Scull	

The President in the Chair.

Re: Executive Session on Personnel Matter

The Council conducted an executive session on a personnel matter beginning at 9:10 A.M.

Re: Briefing on Public Sector Labor Relations

The Council met with Robert Hillman, Special Counsel for Labor Relations; Council Staff Director McDonell; Mr. Hilliard, Director of Personnel; Mr. Torgesen, Assistant to Personnel Director for Labor Relations; Assistant County Attorney Sorrell; and Legislative Counsel Frankel, to discuss public sector labor relations.

Mr. McDonell stated that the staff was requested to arrange a meeting for the Council to review the principles that have evolved in public sector collective bargaining, and to discuss in detail in executive session some of the implications and approaches that might be taken by the County government in implementing Section 510, Collective Bargaining, of the County Charter.

In introducing the Special Counsel, Mr. Hilliard stated that Mr. Hillman has a background in labor law and an extensive background in public sector collective bargaining. He has a combination of training, skill and understanding of the public sector that uniquely qualifies him to advise the County government in this regard.

Mr. Hillman stated that, from 1940 to 1980, the percentage of public sector employees in the civilian labor force increased from 6.5% to 20%. Accompanying that growth was a tremendous rate of growth in unions and collective bargaining in the public sector, to the extent that it has a tremendous impact on local governments and economies. In the private sector, collective bargaining has a 45-year history; in the public sector, it has only a 15-year history. As someone who has practiced extensively in the private sector, Mr. Hillman stated that there is still much to learn after a 45-year history. In the public sector, problems are compounded by the extensive variety in local governments.

Mr. Hillman stated that one of the underlying reasons for the increase in public sector unions has been the great increase in growth in the urban and suburban areas that has been experienced since World War II. As these areas have grown, there has been a tremendous expansion in the role of local government. As a result of greater social consciousness, new areas of governmental activities have emerged, along with new ways of thinking about government workers. Local government is no longer a small organization. The rise of public sector employment caused local governments to become competitive in labor markets, and many employees during the 1960s and 1970s began to feel that their government jobs were very secure. Unions offered additional security and benefits. In 1961, President Kennedy signed an Executive Order that had a great impact on public sector unions. Although it only authorized collective bargaining for federal government employees, it had a tremendous filtering-down effect. The unions saw that the state and local government employees could be organized if federal employees could be organized, and organized labor unions began to funnel organizing funds into those areas.

Mr. Hillman stated that the mid-1960s to the 1970s was a time when private sector labor unions were declining. As the economy evolves into a more service-oriented economy, the private sector labor force will decline in terms of numbers of organized employees. As a result, unions looked for new members, and with the increase in the number of public sector employees, organizing efforts were very successful. Mr. Hillman stated that slightly under 50% of the total American

work force is organized. During the last ten years, this figure has remained constant due to the growth of public sector unions while private sector unions have declined. About 50% of the public sector employees are unionized.

Mr. Hillman reviewed the history of organized labor in the educational field.

Mr. Hillman stated that one reason for the increase in unions in the public sector is that, as inflationary pressures hit local governments, pay increases for government employees have been a very low priority. As employees are also impacted by inflation, this has given them an impetus to organize.

In response to an inquiry as to whether there is a correlation between groups that unionize and the benefits they have, Mr. Hillman stated that there are differences of opinion. It is his opinion that once a government provides a minimum level of benefits, unionization depends on how the government administers those benefits and how it communicates those benefits to the employees. Day-to-day dealings with employees are also important. If a government has a record of no pay increases or very small increases, after a period of time the employees will organize to do something about it. With respect to one of the reasons that the percentage of public sector unions is increasing while private sector unions are decreasing, Mr. Hillman stated that private employers have learned to combat union organizing activities. He described various ways some companies have successfully kept unions out of their businesses, including extensive communications programs and internal grievance procedures. He indicated that he would be happy to provide Councilmembers with a copy of a book concerning union avoidance theories. The inexperience of government management in dealing with unionizing efforts has been one of the biggest factors in the increase of public sector unions. Mr. Hillman stated that a reapportionment decision of the U.S. Supreme Court also had an effect on the increase of public sector labor unions. Many states had legislatures that were traditionally controlled by rural interests who are opposed to unions of state and local employees. However, due to reapportionment, many state legislatures are now controlled by urban interests, and many states have enacted collective bargaining legislation. Once collective bargaining is authorized,

an election is held in which the union generally wins representation. There have been very few cases in which a union has lost a public sector election. In the private sector, they lose 50% of such elections.

It was noted that private sector unionization has declined because of the shift from a production-oriented economy to a service-oriented economy, yet many public sector employees are service-oriented. Mr. Hillman stated that private sector service employees are more difficult to organize because they are not all in one place, such as in a large factory. It is very difficult to organize a shop of 100 employees, for instance, when 75 of them are out on trucks during the day cleaning carpets. In addition, white collar workers have a certain image of themselves and the feeling that unions are for factory workers. Private industry has fostered that image. Most local governments do not have someone assigned to combat union organizing activities and to talk with employees about their jobs and concerns. Once a collective bargaining bill is enacted and unions begin organizing employees, they give employees 25 good reasons why they should belong to the union, and no one on the employer's side gives any reasons why they should not join the union. The private sector employer works very hard in this regard. In union representation elections in the private sector, there is virtually 100% participation among employees. The employer makes sure that everyone participates; he does not want a minority or one group of employees to decide the issue. In the public sector, however, election participation is less than 50% because no one on the side of management campaigns against the union and encourages people to vote.

With respect to differences in collective bargaining between the public and private sectors, Mr. Hillman stated that the most obvious difference is economic. The private sector employer has a different set of economic forces at work. He is in a competitive situation, and employees recognize that he must remain competitive in order to stay in business. Private sector negotiations are bilateral; they involve the employer and the union. In the public sector, negotiations are trilateral; they involve the employer, the union and the public which must pay the bill. The public is the true employer, but most citizens do not see themselves in that way, nor realize that negotiations affect their tax dollar. In general,

the public wants public sector employees to have very good benefits. Citizens feel that their teachers, police officers and firefighters should have more benefits, but they do not want bigger tax bills. In this regard, certain public sector employees have done a good job of public relations, as evidenced by bumper stickers concerning the important role played by teachers in society. Mr. Hillman stated that public pressures in collective bargaining are very real for elected officials and are intensified by the media which often produce stories about a potential strike when everyone knows that a contract will be signed before the deadline. In the private sector, the employer can come to the bargaining table and make a deal with the union for a certain wage increase. This is not the case in the public sector because of the doctrine of separation of powers. In most cases, the executive branch of government negotiates the agreement; however, this agreement merely serves as the executive's budget recommendation to the legislature. There is a second round of approval, and the negotiators must think in terms of what the executive wants and also what the legislative body will approve. In the private sector, the employer and union can negotiate any subject and come to any agreement that is satisfactory to both sides. In the public sector, there are constraints as to what can be subject to negotiation.

Councilman Gudis pointed out that the separation of powers enables an executive to reach an agreement with a union knowing that the legislative body will not approve it, resulting in politicization of the process.

With respect to the basic structure of a public sector labor law, Mr. Hillman stated that it must address representation rights. In many cases there are already recognized representatives; a basic decision must be made as to whether the law should recognize those representatives or require new elections. The law must address protections for both employees and employer and who shall administer those protections. The issue of protection of rights has not been as important in the public sector as it has in the private sector because most problems occur during the representation process and there have not been sharp contests for representation in the public sector.

Mr. Hillman stated that a basic public sector labor law must address the bargaining process which includes questions such as: Who will represent the

6/26/81

County? How much authority does the representative have? What procedures are built in for approval of the negotiated agreement? What is the scope of the bargaining? What can the negotiator give away? What is the procedure for resolving an impasse? Mr. Hillman stated that the timeframe of the bargaining process must coincide with the County's budget process. He reviewed the various forms of mediation, including binding arbitration. He reviewed the states that have binding arbitration, stating that several states are now backing away from binding arbitration. It was noted that strikes are a method of resolving impasses. Every jurisdiction that has had a police strike has had a law prohibiting it. Some laws allow selective strikes as long as vital public services are not affected. Mr. Hillman stated that he is a member of a professional organization of labor relations specialists. There is a strong feeling in that organization that governments can survive any strike; however, there are strong reservations about strikes by police officers and firefighters.

Councilman Fosler agreed, stating that there is a school of thought that says that public sector strikes need not be as damaging as people think of them as being and that the government may be better off not prohibiting them. Instead, it should attempt to deal with strikes more effectively.

Mr. Hillman pointed out that the AFL-CIO in Maryland has not been strongly supportive of strikes by public employees.

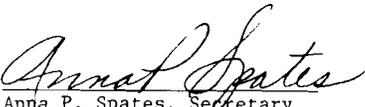
(The Council recessed at 11:05 A.M., and reconvened at 11:25 A.M.)

Re: Executive Session on Potentially Litigable Issues

The County Council conducted an executive session on potentially litigable issues.

The meeting adjourned at 12:40 P.M.

ATTEST:

  
Anna P. Spates, Secretary  
of the County Council for  
Montgomery County, Maryland