

A STUDY GUIDE TO ACCOMPANY

The 1968 MEMPHIS SANITATION STRIKE

Its Place in Labor Law



Presented by

The College of Labor and Employment Lawyers

and

The National Academy of Arbitrators Research and Education Foundation

Production Committee

John E. Higgins, Jr.

Cynthia Nance

Carol Rosenbaum

Susan Wan

Maurice Wexler (*deceased*)

I. Introduction

The 1968 Memphis Sanitation Strike: Its Place in Labor Law, the film you are about to see, tells the story of the 1968 Memphis Tennessee Sanitation Strike, a strike that occasioned the assassination of Reverend Dr. Martin Luther King, Jr. Dr. King came to Memphis in support of the striking sanitation workers. For many, this strike was not just a typical public sector labor dispute – it was an important civil rights event. Indeed, it was civil rights issues that prompted Dr. King’s decision to go to Memphis in support of the strikers. All of the sanitation workers were Black; all of their supervisors were White.

At the same time, the matter was a labor dispute with issues that went beyond wages and working conditions. In fact, the core issue in Memphis was one that is at the very heart of labor–management relations – specifically, the concept of exclusive recognition. Does a union that is supported by a majority of the employees in an appropriate bargaining unit speak for those employees and must the employer respect the union as the exclusive representative of those employees? While this had been true for decades in the private sector, it was not true, in Tennessee at the time, in the public sector. It is this latter question that made the Memphis strike an important labor dispute and prompted the College of Labor and Employment Lawyers (the College) to produce this film.

What is the College? It is an organization of experienced labor, management, and employee attorneys, neutrals, government attorneys, and law professors who seek to provide leadership and direction in labor and employment law. The College provides training and information about the history and practice of labor and employment law. As part of its effort to provide lawyers and law students with information about the history of this important branch of the law, the College created the Steven Tallent Video History Project (the VHP), named for one of the College’s founders. The prime purpose of the VHP is to record interviews with the leaders in the fields of labor and employment relations, including attorneys, judges, labor union leaders, and arbitrators – interviews that can be used by students, law schools, colleges, and bar associations to give a perspective on where labor and employment law came from and on its place in a democratic society.

This documentary uses portions of some of these interviews, as well as film taken specifically for this presentation. Its purpose is to warn the viewer that the labor dispute that took place in Memphis in 1968 was not an aberration. Rather, Memphis was the direct result of the absence of a statutory system for resolving labor disputes – not just about wages, but again, about that essential issue – do employees have a statutory process to obtain an exclusive bargaining representative?

I am a retired attorney who spent all of my professional career with the National Labor Relations Board, an agency that is charged by Congress with, among other things, specifically resolving disputes about representation in the private sector. The first 4 years of my 47-year career were spent in the Memphis, Tennessee Regional Office, and I was there in 1968 when the strike and assassination occurred. I saw firsthand what the absence of a dispute-resolving NLRB-like agency can mean in public sector labor disputes.

In the private sector, it is common for unions claiming the support of the majority of an employer's workers to ask the employer to recognize the union voluntarily. Such voluntary recognition is lawful as long as the union has majority support. But the employer is not obligated to recognize the union and if the employer declines to do so, the union may petition the NLRB to conduct a secret ballot election in which the employees vote for or against collective-bargaining representation. The NLRB does not have jurisdiction over public sector labor relations, meaning that labor disputes between public employee unions and public employers need to be resolved by the parties themselves or agencies other than the NLRB. Whether or not there is an agency to handle labor disputes among public employees depends on whether the state has created a state agency – an NLRB-like agency that can conduct secret-ballot representation elections among public employees and then enforce the results of that election.

There was no state labor relations agency in Tennessee in 1968, and the absence of such an agency in a significant way accounted for the strike and the horrible death of Dr. King. The sanitation workers' union's request for recognition was rebuffed by the city. Because there was no NLRB-type agency for the workers to turn to, their only recourse to compel recognition was to take to the streets.

The film and this Study Guide are designed to explain what happened in Memphis, what could have been done to prevent it, and to warn the viewer that there are still many states in the United States where a Memphis-like strike could happen again. (Indeed, there is still no state labor relations agency in Tennessee.)

II. Public and Private Sector Labor Law

In order to appreciate what happened in Memphis in 1968 and how it could have been avoided, viewers need to know about the differences in labor law between the private and the public sectors.

The National Labor Relations Act (NLRA) was passed in 1935, setting up a mechanism to protect employees from unfair labor practices by their employers when they engage in union activity. That law remains in effect today. It has had two major amendments -- one of which expanded NLRA coverage to protect employees and employers from union unfair labor practices. Prior to 1935, there was no agency, Federal or state, that protected employee union organization except for the Railway Labor Act, which gave protection to railroad workers and, later, to airline employees.

For purposes of this Study Guide, the most relevant provisions of the NLRA are its election procedures -- procedures that provide employees, unions, and employers with a secret-ballot mechanism by which employees decide for themselves whether or not they want union representation. These election procedures are administered by the NLRB and include the means to enforce the decision when a majority of employees in a unit select a union to represent them.

The process is relatively simple. A union can petition the NLRB to conduct a secret-ballot election. In order to do so, the union must show that there is a sufficient percentage of employees interested in having a particular union represent them to warrant NLRB action and it must request that the election be conducted in an appropriate unit. An appropriate unit is a group of employees, often at a single facility of an employer, who have a sufficient community of workplace interests to make collective bargaining feasible.

There is an extensive body of NLRA law as to who is an employee; what is a community of interest; and when, where, and how any election is conducted. The important point for this Study Guide and the film you are about to see is that the viewer knows that the NLRB will conduct an election to decide the question of exclusive representation and will then enforce the results of that election if the union wins and the employer refuses to accept the election results.

The Federal government itself, the states, and the political subdivisions thereof (cities, towns, and counties) are excluded from the jurisdiction of the NLRB. In short, that means the NLRB cannot run a secret-ballot election to determine employee wishes on union representation in those entities. As you will see in the film, public employees have demonstrated an interest in obtaining union representation in dealing with their employer as early as the Boston Police Strike in 1919. At that time, not only was there no state agency, but there was no NLRB, which was not formed until 1935.

Beginning in the early 1960s, there was a movement to create state NLRB-like agencies to protect public-sector employee rights and to conduct representation elections. This movement bore fruit in Wisconsin in 1959, and it was given impetus by the decision of President John F. Kennedy to provide these rights to employees in the Executive Branch of the Federal government by means of Executive Order 10988 in 1962. Today, there are a number of states that have granted their public employees the right to say “yes” or “no” to union representation and collective bargaining and have set up election procedures that, generally speaking, are similar to those of the NLRB. Again, as noted earlier, in Tennessee in 1968 there was no such agency, and therein lay the problem.

The Memphis Sanitation workers wanted collective bargaining, but the mayor of the city of Memphis said they had no such right and refused to recognize the union. Thus, like their earlier public-sector counterparts in the Boston Police Department in 1919, they were left with the choice – forget about a union or take to the streets in their efforts to obtain collective bargaining.

In each of these cases, Boston in 1919 and Memphis 49 years later, the employees struck the city. And in each case that strike had national implications. In Boston, Massachusetts,

Governor Calvin Coolidge called the State Militia to maintain order in the streets of Boston, an act that a year later resulted in his election as Vice President of the United States. He later became President when President Warren Harding died in office in 1923.

In Memphis of course, the strike led to the assassination of Dr. King with its major impact on the Civil Rights movement.

While there had been some labor legislation at the Federal level prior to 1919, that legislation was for the most part focused on particular industries, such as the railroads. There was no attempt to create agencies at the state level that could run secret-ballot elections to determine employee wishes about collective bargaining and, if they voted for representation, to then enforce their decisions by requiring good-faith collective bargaining.

In 1935, novelist Sinclair Lewis wrote the novel, *It Can't Happen Here*. While that story is not about labor relations or labor law, the title of the book could easily be adapted to the current state of public sector labor relations in many of the states in the United States today. Thus, even today, some states have no public-sector labor relations law, and some others have laws covering only a portion of the public sector workforce. The absence of a statutory election procedure in these states could easily lead to a Boston or a Memphis, if a political leader exhibits the same kind of intransigence that the mayor of Memphis showed when confronted with worker efforts to have union representation. In short, “it could happen here” in many states.

III. The Setting – Memphis and the Strike of 1968

In planning this Study Guide, I had every intention of telling the reader what Memphis was like in 1968 and particularly what the labor relations setting was for Black public employees who wanted a union. I expected much of this would be based on my personal experience of four years of living in Memphis. I did do some research, however, and found an article that described the atmosphere much better than I ever could.

The article is entitled, “A Time of Crisis: The Sanitation Strike,” and it is available on the website of Focusing History and Ourselves (FHO). FHO is a non-profit organization that describes

its mission as using “lessons of history to challenge teachers and their students to stand up to bigotry and hate.”¹ The full article follows:

A Time of Crisis: The Sanitation Strike

By the 1960s, the walls of segregation were coming down in cities and towns across the nation. Many white and black Americans in Memphis took pride in the way their community had avoided the violence that accompanied integration in other places. Then on February 12, 1968, about 1000 of the city’s 1100 sanitation workers went on strike. That strike soon revealed deep divisions within Memphis.

“The white community,” writes journalist Joan Turner Beifuss, “saw ‘issues,’ either because it chose to or because it could not, in fact, see in any other way.” One “issue” was whether government workers ought to be unionized. Another was financial. Where would the city get the money to pay the raises? Still another focused on whether the workers were being “manipulated” by “outside agitators.” To most African Americans, the strike had little to do with balanced budgets, union organizing, or interference from outsiders. In their eyes, the strike was about dignity and respect. That is why the strikers wore signs reading “I AM A MAN.” The pay for a sanitation worker in 1968 was \$1.80 per hour. Even those who worked full time were eligible for food stamps. Yet the jobs the workers performed were not only essential to the community but also dangerous. Not long before the strikes began, two men were crushed to death in a garbage packer on one of the trucks.

The Ministers Association, a group of black and white religious leaders in Memphis, tried and failed to bring the two sides together. When the talks broke down, African Americans organized daily marches up and down Main Street. On February 23, violence erupted in the city for the first time. Who was responsible? The police claimed marchers rocked a police car. The strikers insisted that the car crossed into their lane and brushed against a marcher. No one knows what really sparked the incident. What is known is that the police responded by spraying Mace into the faces of the marchers, including a number of ministers. As a result, tension mounted in an already tense city.

By early March, the police were arresting strikers and their supporters for sitting in at City Hall and keeping replacement workers from moving garbage trucks. On March 18, Dr. Martin Luther King Jr. arrived in the city to show his support for the workers. At a rally, he told the workers, “Our society must come to respect the sanitation worker. He is as significant as the physician, for if he doesn’t do his job, disease is rampant.” On March 28, King returned to Memphis to lead over 5000 people on a march through the city. Twenty minutes after it began, a group of young African Americans began breaking windows and looting stores. The police immediately moved in with tear gas and

¹ See the FHO website: <https://www.facinghistory.org/>. The article is reprinted here with permission of the FHO.

nightsticks. The marchers scattered, running for shelter. As a result of the violence, a curfew was imposed on the city and over 3,8000 National Guardsmen arrived in Memphis to keep order.

King and two Memphis ministers, James M. Lawson and H. Ralph Jackson, held a press conference later that day. They expressed sorrow that a small group had disrupted the march. They also vowed that the protests would continue until a settlement was reached. The next day National Guardsmen escorted the marchers as they walked up and down Main Street. One later recalled, "I wore that ["I AM A MAN"] sign front and back. We had to go through all that just to be treated half-way fair. Somebody has to suffer for some good for somebody else. Anything good, there's somebody who suffered for it."

On April 3, as the strike dragged on, King came back to Memphis to lead yet another march. But before it could take place, a white assassin shot and killed the civil rights leader. The next day, April 5, 300 black and white members of the Ministers Association and the Interdenominational Ministerial Alliance marched from St. Mary's Cathedral to City Hall. Rabbi James A. Wax spoke to the mayor on behalf of the two groups:

What we came here for this morning, sir, is to appeal to you out of the fervor of our hearts that this city shall be ruled with justice, and justice for all. I realize we live in a society of law and order. We must have laws. But I would remind you most respectfully, sir, that there are laws that are greater than the laws of Memphis and Tennessee – the laws of God.

The following day the President of the United States sent a federal negotiator to help settle the strike. This time, the two sides reached agreement on every issue but one. The last obstacle to a settlement was the demand for an immediate pay raise. Negotiators recommended a raise of ten cents an hour effective May 1, 1968 with an additional five cents per hour on September 1. The union accepted the proposal. City leaders were willing to go along with it but claimed they did not have enough money in the current budget to pay the raises. They were short by about \$558,000. As negotiations once again came to a standstill, a private citizen offered a solution. Abe Plough, a Jewish philanthropist and businessman, offered to contribute the money for the raises provided that his name not be made public. The people involved agreed, but in time his identity became common knowledge.

While the two sides worked out the final details of a settlement, a number of people in Memphis decided that it was time for them to speak out. They formed a citizens group called "Memphis Cares" and sponsored an assembly on April 7 at Crump Stadium. About 7000 people applauded as black and white Americans voiced their concerns and expressed their support for the following statement:

We live in Memphis. It has been a good city, but far from perfect – much less perfect than many of us realized. Something happened here which laid bare a side

of our common life to which all too many of us had been blind. We ... solemnly, in the presence of God and of one another, pledge Ourselves ... to the building of a city where people can trust one another, respect one another, and respond to the needs of one another.

As the film will show, what could have ended the strike was recognition of the union as the employees' representative and agreement by which the union could obtain the resources (checkoff of union dues by the employer) necessary to support itself in collective bargaining. But Mayor Loeb argued that the city could not and would not do so because the strike was illegal under Tennessee law and because the city was by law precluded from recognizing and bargaining with a union of its employees.

IV. Mayor Henry Loeb's Position

As you watch the film, you will see that the mayor and his representatives often say that the strike is illegal, and that the city cannot recognize or even discuss issues in the face of illegal activity.

Let's look at the two legal points presented by the city: first, that a strike by public employees was illegal in Tennessee and, second, that the city did not have the legal authority to recognize and bargain with a union of its employees.

As to the first point, the mayor was correct. The law in Tennessee made strikes by public employees unlawful. The mayor and his attorney correctly relied on a holding of the Supreme Court of Tennessee that a strike of public-sector employees in the city of Alcoa was "unlawful and contrary to the public policy of this State."²

As to their second point, viz., – "we have no authority to bargain" --, the city relied on a decision by the Court of Appeals of Tennessee, Western Section³ that the Weakley County Municipal Electric System was without authority to enter into a collective bargaining contract with a union of its employees. In the absence of enabling legislation, Mayor Loeb was probably

² *City of Alcoa v. IBEW*, 308 S.W. 2d 476, 482 (1957).

³ *Weakley County Municipal Electrical System v. IBEW*, 309 S.W.2d 792 (Tenn. 1958).

correct on this point, if indeed that was his true position. Like most chief executives, however, Mayor Loeb no doubt had some flexibility and could have worked out a deal with the union before the tragic assassination. During the decades when there was no state authorized public-sector collective bargaining, dozens of cities nonetheless had entered into contracts of various levels of formality with public-sector unions. Indeed, the city of Memphis found that flexibility after it was too late to avert the tragedy by calling the agreement a *Memorandum of Understanding* rather than a Recognition Agreement or a Collective Bargaining Agreement.

It is not the purpose of the documentary to argue for or against strikes by public-sector employees. That is an issue that each state must decide on its own. The point of the film is that state legislatures must decide whether their cities, towns, and counties and, yes, even the state itself, have the authority to recognize and bargain with unions of their employees. And, importantly, what the effect can be when a state does not set up an NLRB-like agency to decide the labor relations issues presented by public employment.

And whether or not those cases relied upon by Mayor Loeb were his real reasons for rejection of the efforts of the employees is, again, not the point of the film. But it must be pointed out that the strike was ultimately settled, and collective bargaining began without any change in the law the mayor relied upon. Instead, tragic events finally brought the parties together and, once together, creative and well-intentioned people found ways around the asserted legal barriers raised by the city.

As noted above, there are still many states that do not have an administrative system that could solve the problem that Mayor Loeb created with his intransigence. The purpose of this film is not, I repeat not, to advocate a full statutory structure for each state that would parallel the NLRA. Indeed, the NLRA's strong support for the right to strike in the private sector has not been adopted by most states that have enacted public-sector bargaining rights. What each state needs, at a minimum, is an NLRB-like procedure by which a neutral agency can decide appropriate bargaining units, decide who should be in the units, conduct secret-ballot elections to see if the employees want a union, and then enforce the outcome of the election.

V. Acknowledgements

The College of Labor and Employment Lawyers is most grateful to the National Academy of Arbitrators and its Research and Education Foundation for its financial support in the production of this film – and also to the Fellows of the College who contributed financially to this production.

We thank and applaud Carol Rosenbaum for her work in producing, writing, and directing this film. Ms. Rosenbaum has worked with the Video History Project since its beginning in 1999. She has supervised and produced dozens of VHP interviews of leaders of the labor management community. Ms. Rosenbaum has also written and produced two other documentary films for the College.

Special thanks go to Professor Cynthia Nance, the Fellow on the Planning Committee who narrates the film. We also remember and thank our colleague, a proud Memphian and member of the Planning Committee, Fellow Maurice Wexler, who, sadly, passed away shortly before this film was completed. Maurice worked tirelessly on this project.

Finally, our thanks to Professors Martin Malin and Joseph Slater and Arbitrator Rosemary Pye, Fellows of the College, who reviewed the draft of this Guide and made a number of excellent suggestions for change.

VI. Our Website

To learn more about the College, and to watch video excerpts of all our interviews, please visit our website: www.laborandemploymentcollege.org.

John E. Higgins, Jr.

for the Video History Project
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