TPSA

July 2020 News

A Brief History of Unions Achieving Meaningful Social Reform

> *"The fires of frustration and discord are burning in every city, North and South, where legal remedies are not at hand. Redress is sought in the streets, in demonstrations, parades, and protests which create tensions and threaten violence and threaten lives. We face, therefore, a moral crisis as a country and as a people. It cannot be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk. It is time to act in the Congress, in your State and local legislative body and, above all, in all of our daily lives. It is not enough to pin the blame on others, to say this is a problem of one section of the country or another, or deplore the fact that we face. A great change is at hand, and our task, our obligation, is to make that revolution, that change, peaceful and constructive for all."*

You might think this quote was taken straight out of today's news headlines. The first half of 2020 has certainly been no ordinary 6 months! But this quote is from President John F. Kennedy one hundred years after the Civil War, on June 11, 1963. A Federal Court had ordered two young black residents to be admitted to the University of Alabama. The Alabama National Guard was called in, following a series of threats, to help admit them safely. The challenges we face today as a country are, of course, different. But there are always parallels with other moments in U.S. History. As we celebrate our Independence Day, let us look briefly at a few of those moments where labor helped usher in historic social reforms through non-violent action.

Women's Rights: Rewind 100 years. The day is March 25, 1911. The location is Greenwich Village in Manhattan. The event is the Triangle Shirtwaist Factory Fire, the

deadliest industrial disaster in New York City and one of the deadliest in the U.S. A fire erupted in a garment factory, killing 146 workers – 123 of them women – most of whom were recent Italian and Jewish immigrants aged 14 to 23. Workers were trapped inside the building, suffocated from smoke inhalation, or jumped to their death from the windows of the burning factory. The building lacked fire escapes, and the doors to the stairwells and exits were locked, which was a common practice at the time (designed to prevent workers from taking unauthorized breaks and to reduce theft). This was before laws that required building and fire prevention inspections and other basic workplace safety measures. During the industrial age, it was well-known that workers toiled under oppressive conditions, but this event shocked the nation's conscience.

The aftermath led to the women's suffrage movement and labor joining forces to pass significant legislation at the local, and, ultimately, at the national level. Stunned by the event and spurred into action, factory women organized the International Ladies' Garment Workers Union to fight for better working conditions for sweatshop workers. City leaders formed a Committee on Public Safety, and on the recommendation of former U.S. President Theodore Roosevelt, appointed Frances Perkins to lead it. Perkins was then head of the New York office of the National Consumers League and an eyewitness to the tragedy. She identified specific problems and lobbied for new legislation, helping to pass a law capping the number of hours that women and children could work at 54 hours per week. In the state legislature, then-State Senator Robert Wagner chaired the State Factory Investigating Committee (1911-1915), which held a series of widely publicized investigations around the state, starting with fire safety and then moving on to broader workplace safety concerns. The findings led to 38 new laws regulating labor in New York.

There are a few interesting parallels with the close of that decade 100 years ago. First, like COVID-19, the country suffered from the Spanish Flu Pandemic of 1918. Second, the 19th Amendment to the U.S. Constitution, which guaranteed women the right to vote, passed Congress June 4, 1919 and was ratified on August 26, 1920. Third, the Presidential election on Tuesday, November 2, 1920 was the first in which women could vote. The Republican ticket of Warren Harding and Calvin Coolidge defeated a Democratic ticket that included a then-relatively unknown Assistant Secretary of the Navy, Franklin Delano Roosevelt, as the Vice-Presidential nominee.

But Perkins, Wagner, and Roosevelt were just getting started. After winning the Presidency in 1932, Roosevelt asked Perkins to join his cabinet. Perkins identified a long list of labor programs she wanted to pass, from Social Security to the minimum wage. She famously told Roosevelt at the time, "nothing like this has ever been done in the United States before, you know that, don't you?" He then appointed her Secretary of Labor. She was the first woman to hold a cabinet position. Perkins and Wagner would go on to help pass landmark Federal legislation as two of the main architects of the New Deal. This includes the National Labor Relations Act (also known as the Wagner Act after then-U.S. Senator Robert Wagner) on June 6, 1933, which guaranteed private-sector workers the right to collective bargaining through unions of their choosing. It became the template for California's public sector bargaining laws, such as the Meyers-Milias-Brown Act, which made it legal to form public employee associations like ours. Perkins led the passage of the Social Security Act of 1935, which established unemployment and retirement benefits funded by payroll taxes, and the Fair Labor Standards Act of 1938, which adopted a minimum wage, 8-hour day, 40-hour workweek, and the right to earn overtime.

Civil Rights: The March on Washington was a massive protest march that occurred on August 28, 1963, when 250,000 people gathered in front of the Lincoln Memorial in Washington D.C. The official name was the "March on Washington for Jobs and Freedom." This is when Dr. Martin Luther King Jr. gave his "I Have a Dream" speech. The historic event explicitly linked the civil rights movement with the union movement to fight for reform. For Dr. King, the struggle for racial justice went together with the struggle for economic justice. He was driven by the belief that all people had the right to earn a fair and dignified living – regardless of race, gender, occupation, or socio-economic status.

The rally sought both a civil rights bill and a national minimum wage act that would give all Americans a decent standard of living. It helped lead to the passage of Title VII of the Civil Rights Act of 1964, which was first proposed by President Kennedy in June 1963. It is the main federal law prohibiting employment discrimination based on protected characteristics such as race, religion, and gender. After President Kennedy was assassinated in Dallas on November 22, 1963, President Johnson made it a top priority and helped push it to a successful vote in Congress. He signed the law at the White House on July 2, 1964, with prominent civil rights leaders such as Dr. King standing behind him.

Although most remember him as a civil rights icon, Dr. King became just as forceful of an advocate for civil servants and public employee unions. He saw the fight for racial equality as part of the broader struggle for workers' rights and unions to push for dignity, fair pay, and benefits. The civil rights sit-ins of the 1960s were adopted from workers' sit-down strikes in the 1930s, which helped pass the Wagner Act that legalized unions in the private sector. In 1965, on the 30th anniversary of the Wagner Act, Dr. King said:

> "During the '30s, wages were a secondary issue; to have a job at all was the difference between the agony of starvation and a flicker of life. The nation, now so vigorous, reeled and tottered almost to total collapse. The labor movement was the principal force that transformed misery and despair into hope and progress. Out of its bold struggles, economic and social reform gave birth to unemployment insurance, old-age pensions, government relief for the destitute and, above all, new wage levels that meant not mere survival, but a tolerable life. The captains of industry did not lead this transformation; they resisted it until they were overcome. When in the '30s the wave of union organization crested over our nation, it carried to secure shores not only itself but the whole society."

On April 4, 1968, the day he was murdered, Dr. King marched with sanitation workers in Memphis for respect and dignity for all those who perform essential public services. Two sanitation drivers were crushed to death by a malfunctioning truck on February 1, 1968. Frustrated by the City's response, over 1,000 workers went on strike. They demanded recognition of their public employee union, better safety standards, and a decent wage. The night before he died, standing beside public employees, Dr. King said "[t]he issue is injustice. The issue is the refusal of Memphis to be fair and honest in its dealings with its public servants, who happen to be sanitation workers." Shortly after his death, Walter Reuther – the President of the United Auto Workers, an ally of Dr. King, and one of the main organizers of the March on Washington – arrived in Memphis and continued the march with Dr. King's widow, Coretta Scott King. The City ultimately granted the union recognition, a grievance procedure, and a pay increase. Dr. King had said, "[o]ne day our society will come to respect the sanitation work if it is to survive, for the person who picks up our garbage, in the final analysis, is as significant as the physician, for if he doesn't do his job, diseases are rampant. All labor has dignity."

Farm Worker Rights: At about the same time, in another part of the country, agricultural workers in California's Central Valley engaged in similar non-violent protests to gain union

recognition, secure livable wages, and implement safe working conditions. Led by Cesar Chavez, farm workers in Delano went on a grape strike, engaged in pickets outside wineries, and marched 340 miles from Delano to Sacramento to raise public awareness of the working conditions there, such as workers being exposed to dangerous levels of pesticides and other chemicals. At the time, agricultural workers were excluded from the Wagner Act and had to rely on the farm owners to recognize the union voluntarily.

In December 1965, the UAW's Walter Reuther joined Chavez in a pro-strike protest march through Delano, which was the first time the strike attracted national media attention. Reuther also pledged that the UAW would donate money to the striking workers. The national attention ultimately pressured farm owners into conceding to the strikers' demands. In 1968, Chavez, a devout Roman Catholic, even enlisted the support of then-Presidential candidate Robert F. Kennedy, who sat with Chavez during a hunger strike, toured a labor camp with him, and celebrated a Catholic mass with Chavez and other farmworkers. In turn, Kennedy asked Chavez to travel across California with him in May 1968, urging farmworkers to back him in the Democratic primary. It helped Kennedy secure victory in California's June primary. He was at the victory celebration in Los Angeles when RFK was assassinated on June 5, 1968.

Chavez was committed to non-violent change and justice. Dr. King and Mahatma Gandhi inspired Chavez, who remained committed to non-violent social change his whole life. In 1975, California became the first state to establish collective bargaining for farmworkers.

Conclusion: Whether today's challenges motivate you into action or not, it is wise to recall President Kennedy's call to make the change we see around us peaceful and constructive for all. You are in good company when you do. The labor movement – including public employees – have a history of being at the forefront of many significant transformations in our history and have helped achieve lasting reforms that improve the lives of workers and citizens. In a year without a lot of good news, it is something to celebrate during our nation's birthday, and a reason to be hopeful about our future.

News Release - CPI Increases!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

0.1% - CPI for All Urban Consumers (CPI-U) Nationally

0.8% - CPI-U for the West Region

0.9% - CPI-U for the Los Angeles Area

1.1% - CPI-U for San Francisco Bay Area (from April)

0.9% - CPI-U for the Riverside Area

0.3% - CPI-U for San Diego Area

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.

Question: I am being told that I must physically return to work and that I am not covered by the FFCRA child-care exception because I am an essential worker. But my child's daycare provider is still closed, and I have no idea if or when they are going to re-open. I thought there was a state law that allows for taking time off for child-related activities. Do I qualify for that law? I think this qualifies as an emergency. Please let me know what my leave rights are.

Answer: Yes! California Labor Code §230.8 provides additional leave protections for child-related activities. Under the law, a parent can request leave to (1) find, enroll, and re-enroll a child in school or with a licensed childcare provider, (2) address a childcare provider or school emergency, or (3) participate in school-sponsored or childcare-sponsored activities, such as a field trip, graduation, or holiday party. Stepparents, foster-parents, grand-parents, and legal guardians are also allowed this kind of leave.

You can only use up to 8 hours per month unless it is an emergency. An "emergency" is when your kid cannot stay at school because the school says he/she needs to be picked up, your child is having disciplinary/behavioral problems, or there is a school closure or

natural disaster. If your child-care provider is closed due to COVID-19, this should constitute an "emergency." To qualify, your employer must employ 25 or more people and you must have a child who is in grades K-12.

Under the law, you may use your existing paid leave or comp time or request unpaid leave. You must give reasonable notice to your Agency of the planned absence before taking time off, or as soon as practicable in the case of an emergency. Your Agency cannot retaliate or discriminate against you for using this kind of leave. This is a great job protection benefit for working families in California! If you have questions or need help with child-related activities leave, contact your professional staff.

Question: I am a professional employee. We have big deadline for a project as we approach the end of the fiscal year. To meet the deadline, I was asked to work overnight and over the weekend. For the past month, I worked over 120+ hours trying to complete this project. I asked my supervisor if it was possible for me to bank these times for the future, but he basically told me that we must work as much as possible to get our tasks completed even if it means working unpaid overtime. Is that true?

Answer: No, the Agency cannot require you to work unlimited hours. The Agency also cannot treat your overtime hours as "unpaid." The first question is, are you exempt under the Fair Labor Standards Act (FLSA), or are you hourly? If you are a professional level employee, you may be exempt, in which case, you do not have a legal right to bank or be paid for any hours worked over 40 in a workweek. But check your MOU. Exempt employees often get paid administrative leave in their labor contracts. In most cases, this is to recognize that exempt employees frequently work extra hours to complete work projects, and they do not get paid overtime when they do, as is the case with hourly workers.

If you are hourly, the Agency must pay you at the overtime rate for any hours worked over 40 in a workweek. Check your MOU here too. Hourly workers can often bank overtime as compensatory time in lieu of receiving cash, at least up to the negotiated cap. After that, overtime hours must be paid as cash. Management can assign overtime, but they cannot refuse to pay you for it!

In either case, although management can require you to complete assigned projects, and you should do as directed to avoid potential discipline for insubordination, there is a limit on what management can reasonably expect you to accomplish. Contact professional staff who can help determine if you have a grievance. If you worked 120+ hours *on top of* your regular 40 hours per week, this is arguably excessive. If they

reprioritized your work so that you spent most of your normal work time just on this project only, it is probably ok.

Question: Our Department Manager recently informed us that the Agency will no longer allow people to telecommute. They want everyone physically back at work by the first of the month. Many of us, including me, have been telecommuting and it has been working out great. There have been no issues. We are getting our work done. We are not in job classifications that require on-site work. Top management and Human Resources are saying the FFCRA does not allow us the right to telecommute. They said they will allow us to use the leave if we meet one of the conditions. Can they do this? It does not seem to make sense to end telecommuting in the middle of a pandemic. They should not be rescinding the existing telecommuting policy. At the very least, they should allow for it as an accommodation on a case-by-case basis. What can we do?

Answer: Unfortunately, the FFCRA does not provide a right for you and your co-workers to telecommute. It only allows you to take qualifying leave if you meet the conditions. If the Agency allows you to take the leave, there is nothing actionable under the FFCRA. Take the leave if you need it. Your safety should be a top priority.

If there is already an existing telecommuting policy, management must follow that policy. For policies that pre-dated COVID-19, most allowed management broad discretion as to whether to approve or reject any specific telecommuting request on a case-by-case basis. If they are applying this type of policy, and refusing your request based on operational needs, there is probably no grievance. However, some COVID-19 telecommuting policies are more generous. It is best to check the policy to see if you are eligible. The Agency also cannot rescind the pre-COVID policy unilaterally. This is subject to meet and confer with your Association. If the Agency refused to meet and confer, this may violate state bargaining law. But if it was a temporary COVID-19 policy that was in effect only for the Shelter-in-Place, there is likely nothing actionable. The Agency does not have to meet over a policy that expires.

That said, you are correct that it does not sense to end telecommuting in the middle of a pandemic. Contact your Association, who can ask management to extend telecommuting for a limited time, at least for those positions that are not needed on-site. This is what many local public health directives advise.

If you fit into the “high-risk” category, you could request an accommodation to continue telecommuting. “High-risk” is if you are over the age of 65 or have a

qualifying preexisting medical condition. If you fall in the latter category, contact your doctor for a note recommending telecommuting due to your medical condition. This note should be specific about any work restrictions and identify a specific end-date. You can always renew the note and ask to extend the accommodation as you get close to the expiration date. A note that requires indefinite telecommuting will probably not be ok. Contact your professional staff if they deny your accommodation.

Question: Our Agency has informed us that unless the economy improves significantly, pay for all employees, including managers, will be cut by 10%. It is being handled as a furlough, so we will all be taking one day off every other week as unpaid time. My question is, when the economy improves and the Agency starts building up reserves again, is it unreasonable to expect to be paid for the lost wages?

Answer: First, let us be clear, the Agency may not unilaterally impose pay cuts, whether as a furlough or not. As part of those negotiations, the Association should propose strict time limits if any concession is considered. The key issue is often when is it reasonable to expect the concessions to end and making sure the agreement includes a hard end date.

This may be the end of a budget year, or it may be once financial conditions permit. If the latter, both the Agency and Association should meet regularly to assess when to end the furlough based on the Agency's financial health. Also, if your MOU expires at the end of 2020 or sometime in 2021, it may be good to propose that the furlough end at that time, if it has not already. It would also be a good time to remind the Agency of the sacrifices you made.

To your question, it is reasonable to want to be reimbursed for the financial sacrifices you and your colleagues made to help the Agency through the economic crisis caused by COVID-19. You stepped up in a big way and that should be rewarded. So, it may be worth asking for. But do not count on the Agency paying you the lost wages. In some ways, that is what makes it a sacrifice. Keep in mind; the Agency will say you worked less in exchange for taking less pay. They will feel like it was an even trade-off.

Your Association should request that the furlough end as soon as we are through the crisis. That may be months, or possibly years. But waiting until *after* the economy has fully recovered, and *after* the Agency's reserves are fully restored, is waiting much too long.

Question: I am in the "high-risk" category for COVID-19 (over 65 or pre-existing medical condition) and my Agency is re-opening to the public. They are requiring everyone to wear masks

and maintain 6-feet separation. But they have not installed plexiglass shields for those of us who work at the counter and interact regularly with the public. Also, although they are taking temperatures of employees, they are not doing anything with respect to the public. I do not think the Agency has taken enough safety precautions to prevent transmission – from residents to staff and vice versa. I would like to tell them that I do not feel it is safe for me to return to work under those conditions. Can I legally refuse their directive to return to work?

Answer: No, you cannot refuse their directive to return to work. At least not without the risk of losing your employment. The ordinary rule is "obey-now-grieve-later," unless your immediate health and safety is at jeopardy. This safety exception is interpreted narrowly.

If you are in the "high-risk" category, you may be able to request medical leave under the California Family Rights Act (CFRA) or Family Medical Leave Act (FMLA). These laws allow employees with serious health conditions to take up to 12 weeks of unpaid leave. If you are told to report and feel unsafe, consider requesting this job-protected leave, assuming you are eligible and have not already exhausted your leave entitlement.

You may also be able to request leave or telecommuting as an accommodation under the Fair Employment and Housing Act (FEHA) or the Americans with Disabilities Act (ADA). In either case, you will need to complete some paperwork, but you should request leave ASAP.

As far as the Agency not implementing proper safety measures, the best way to resolve this is to contact your Association. They can request to meet and confer with the Agency over additional measures that should be taken. Your contract may even have health and safety language that could serve as a basis for a grievance.

Keep in mind that residents may share your concerns. They do not want to contract the virus on Agency property any more than you do!

If the Agency is not following proper guidelines – such as those issued by the federal, state, or local public health authorities – your Association has a good argument that the Agency should implement additional measures. The Agency should want to reduce possible transmission of the disease, too. At a minimum, this must include proper physical distancing (6-feet!) and the use of facemasks, even for residents. Call your professional staff if the Agency is not taking these necessary steps to prevent transmission in the workplace.