

City of Cambridge

The Civil and Human Rights Committee held a public meeting on April 6, 1995, beginning at 5:40 p.m. in the Sullivan Chamber for the purpose of discussing the City's compliances with the Cambridge Employment Plan and to receive a explanation of Civil Service Code.

Present at the hearing were Councillor Katherine Triantafillou, Chair of the Committee, Councillor Anthony D. Galluccio, Councillor Michael A. Sullivan, and City Clerk D. Margaret Drury.

Councillor Triantafillou convened the hearing and explained the purpose. She introduced Wallace Sherwood, who monitors compliance with the Cambridge Employment Plan of contractors working on City contracts, to report on contract compliance.

Wallace Sherwood said that winter is the slow down period. There are only four or five big contracts. There is a housing project on Hampshire Street with 22% minority workers and 19% Cambridge residents. Contract 1 B for the storm drain project, for which P. Giorosso & Son is the contractor, is 16% minority workers, and 12% Cambridge residents. Of 24,000 work hours, 4,000 are minority hours and 3,000 are for Cambridge residents.

Councillor Triantafillou asked for a list of the contracts.

Mr. Sherwood continued with the following information. The Haggerty School, which is now wrapping up has put in 60,000 work hours; with 11,000 minority work hours and 12,000 Cambridge resident work hours. This amounts to 20% Cambridge residents and 18% minorities. Double and triple counting is allowed. Sewer Phase 6 Contract 1 C has 5,359 work hours. Of that minority hours amount to 1,700. The contractor is D'Allessandro. There are no Cambridge residents.

Councillor Galluccio asked who are minorities. Wallace Sherwood explained that under the ordinance Cape Verdian, Asian, African Americans and Hispanics are included. Women are not considered minorities under the ordinance.

Mr. Sherwood said that the ordinance has been interpreted to apply only to new hires. A contractor may come with a core workforce. That is not the difficulty. The difficulty is with their on/off workers. The other problem is that the core workforce will often be a jack-of-all-trades person who is doing carpentry work for less than carpenter union workers.

Rep. Alvin Thompson asked about D'Allessandro. Wallace Sherwood said that he has two minorities on site.

Councillor Galluccio asked how big a problem is it that the requirements don't apply to the core workforce. Wallace Sherwood said that although he doesn't agree with the core workforce exemption, it does help to create jobs. It can work, depending on the contractor. Wallace Sherwood added that you really have to set goals higher than you expect to achieve. Contractors can be tough to deal with.

State Representative Alvin Thompson asked what the remedies are. Mr. Sherwood said that it is important to look at what constitutes a bonafide bidder. He cited the problems with the Haggerty School.

Councillor Triantafillou asked Mr. Sherwood to describe how he works with contract compliance.

Donna Mastrianni, Director of Adult Employment for the Office of Workforce Development, said that at the preconstruction conference the City describes what the Cambridge Employment Plan Ordinance requires.

Councillor Galluccio asked about the rationale for only requiring new hires to meet the plan.

Donna Mastrianni said that there would be a problem in requiring a contractor to keep a contingent workforce.

Wallace Sherwood described the weekly workforce forms that the general contractor has to fill out. The general contractor is also responsible for the sub contractors. Ms. Mastrianni noted that this information is given to contractors at the pre-construction conference.

Councillor Galluccio noted that if every city had a plan requiring minorities, it would be easier to explore for contractors who work all over the state.

Ms. Mastrianni agreed. She noted that most surrounding towns have these plans and Boston has a much stricter ordinance.

Councillor Triantafillou asked what are the drawbacks to these compliance efforts.

Wallace Sherwood said that it sounded like the new ordinance has solved some of these problems.

Councillor Triantafillou said that it sounds like Mr. Sherwood as saying that the numbers are O.K.

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Mr. Wallace Sherwood said that they are, but he would like to see Cambridge do better. The biggest problems are with the bidding process. Some contractors actually have a trail of lawsuits. The lowest bidder law limits the ability to look at how good a employer the contractor is.

Councillor Sullivan noted the problem of the filed subbidders. This can only be solved by state statute. Wallace Sherwood agreed; and said that the City could spearhead an attempt to change the state law.

Saphira Baker, Director of the Office of Workforce Development, said that they are trying to make the link between people who are available and job needs.

Councillor Triantafillou asked if Ms. Baker's office maintains a pool of available workers. Saphira Baker said it happens informally through the people coming out of the job training programs.

Councillor Galluccio asked how it works for unions.

Donna Mastrianni said that there are some success stories like the Blouin site. Generally there are two tracks, union and non-union. Unions generally try to be cooperative and send their members who are Cambridge residents. She continued by saying that sites are usually union sites or nonunion sites. More calls come from non-union sites.

Councillor Sullivan asked about Cambridge residents in Local 40's apprentice programs. Ms. Baker said that they have been trying to help with outreach.

Ann Walt, Human Rights Commission, asked if Haggerty was a non-union site. Mr. Sherwood said that there were union carpenters but it was a non-union site.

Mr. Gomes suggested that a criteria be developed for disqualifying the low bidder.

Councillor Sullivan pointed out that the city is constrained by the state bidding law.

Saphira Baker wondered if there was a way to reward the good contractors.

Councillor Triantafillou stated that she would be interested to see what constitutes a responsible bidder.

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Councillor Galluccio noted that there are a lot of barriers to Cambridge residents and minorities being hired when a new construction contract is awarded: the new hire issue, union requirements, low bid laws, etc.

Councillor Triantafillou then turned the discussion to Civil Service, and requested that Michael Gardner, Director of Personnel, provide information regarding how Civil Service works.

Michael Gardner, said that only Massachusetts and New Jersey have state-based civil service systems for municipal employees. The Massachusetts system dates from the late 1880's and is about the oldest in the country. It started as a reaction to concerns about city-based patronage. All positions in cities are covered by Civil Service unless specifically exempted and all positions in towns are exempt unless specifically included. In 1975 the agency that administers civil service, the Department of Personnel Administration, (DPA), had about 575 employees. It was the personnel office for the Commonwealth and did screening and development of entrance requirements. The agency now has between 75 to 80 people, with the same responsibilities. That means they do much less than they used to do.

Mr. Gardner explained that jobs are classified by the muni-class plan, which lists all of the jobs the agency sees as necessary and appropriate for cities. To create a new job description a city has to first petition the Department of Personnel Administration and then the Civil Service Commission.

Councillor Triantafillou asked how this process would work for someone who wants to be a secretary.

Mr. Gardner described the examination process and the veteran's preference - first disabled veterans, then all veterans, then non-veterans. He also explained that to fill a job, a vacancy form is filed with the City Manager along with a requisition to Civil Service. Civil service generates a eligible list, and the City can pick from one of the top three. The city must show "sound and sufficient" reasons for not selecting the top person on the list. Anyone who is bypassed has an appeal right.

Councillor Triantafillou asked whether the City can bypass numbers on the list to hire minorities or residents. Mr. Gardner said that racial status would not be allowed as a reason; if there is a reason for requiring "knowledge of the community" then residency might be allowed.

Rep. Thompson asked about Par Ten.

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Mr. Gardner explained that Personnel Administration Rule 10 (Paragraph 10) states that if a community demonstrates a underutilization on the basis of race or sex and a history of underutilization then the department can authorize two lists, one of the underutilized persons. The standard that would be used to determine underutilization is the Boston SMSA, and Cambridge's minority utilization exceeds these standards.

Councillor Triantafillou asked if you can ascertain someone's race from the list. Mr. Gardner said that you cannot except for Police and Fire.

Rev. Vernon Carter asked whether if there is a minority in the top three, could the minority be hired on the basis of affirmative action.

Councillor Triantafillou asked whether there is a way to get around these rules.

Mr. Gardner said that the decrease in the Department of Personnel Administration staff has meant that they generate fewer lists and have focused on public safety. For the recent parking control officers, the City has requested a new list, and in the meantime notified Civil Service that it will hire provisional non civil service employees.

Representative Thompson asked whether Paragraph 10 could be used in Cambridge.

Mr. Gardner said that Cambridge's numbers for minority employment are significantly better than the thresholds that will allow utilization of Paragraph 10's with a few exceptions for Asians and other minorities in a few places.

Councillor Triantafillou asked how many provisional employees Cambridge has.

Mr. Gardner responded by saying over 200. In 1981, there were so many provisional employees that the legislature provided that provisionals could become permanent by taking and passing the test.

Councillor Triantafillou asked how many non-civil service jobs Cambridge has.

Mr. Gardner said that Cambridge has aggressively sought exemptions.

Councillor Sullivan asked for a comparison of total employees vs. civil service employees as of ten years ago and now.

Mr. Gardner said that the growth in the city employees has been in the hospital, in non civil service positions.

Mr. Gardner then explained the labor service, an area which has been delegated to local control. The City keeps the register, the process is first in, first out, still with the modification for disabled veterans and veterans.

Representative Thompson noted that department head positions are exempt from Civil Service but have not been filled by minority hires.

Councillor Galluccio asked why the consent decree applies to public safety to require minority hiring but not to other civil service jobs.

Mr. Gardner said that in 1970, Federal Court Judge Wyzanski found that the Commonwealth discriminated against African-American and Hispanic candidates in examinations held in 1968, 1969 and 1970. Both the plaintiffs and the Commonwealth appealed. In 1972 the Court of Appeals decided that the Department of Personnel Administration should give a new examination and there should be a specific preference in the formula for African-Americans and Hispanics. Over 10,000 took the test in 1972. In April 1973 there was a consent agreement that provided for a formula certification. In 1975 another consent agreement kept that process in place until communities can demonstrate there is no longer underutilization in police and fire.

Councillor Sullivan asked about most recent department hires for department heads. Mr. Gardner said the most recent were Community Development Department, Traffic and Parking, Department of Public Works, and the Water Department.

Councillor Sullivan noted that two were hired through community processes.

Councillor Triantafillou asked how civil service impacts on the ability to hire minorities.

Mr. Gardner said that the impacts are positive for police and fire, and probably slightly negative on balance for the other jobs. Where there is a bonafide list that must be used, control is taken away from the City.

Councillor Triantafillou asked if there is a way for Cambridge to opt out of the system and do it on its own.

Mr. Gardner referred to Chapter 31A, saying that it provides is a local option, but all it does is replicate the same problems and inflexibilities. He also noted that the City has taken a position in favor of Civil Service reform but the reality is that Civil Service will never get the resources it would need to do a good job. The position of the City and the Massachusetts Municipal Association is that Civil Service should do less but do it better, with concentration on police and fire, and maybe some inspectors.

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Councillor Galluccio said that civil service in an ideal sense should protect minorities. This is the system that was put in place to protect against patronage. Ideally civil service should be strengthened.

Mr. Gardner said that legislation would be required to exempt Cambridge from Chapter 31 and to set up an alternative regulatory process. Cambridge worked with the Massachusetts Municipal Association and Governor Weld on draft legislation in 1991 that would have got rid of civil service in all but public safety. It was reported to Cambridge that Governor Weld gave up because of the problems associated with eliminating the veterans preference.

Councillor Sullivan asked about the cost of running a system locally. Mr. Gardner said that it would be at least a one million dollar operating budget, along with all the liability costs. On the other hand, the Massachusetts Municipal Association legislation would not have required additional expenditures because the City of Cambridge already does professional hiring.

Councillor Galluccio stated that as long as civil service exists, Cambridge has to do a better job at getting out notices of civil service examinations.

Councillor Triantafillou asked for a list of the civil service jobs in Cambridge.

The motion was made to adjourn the meeting at 7:42 p.m.

For the Committee

Katherine Triantafillou
Chair

Committee Report #1

S-160

Comm. received from D. Margaret Drury, City Clerk transmitting a report from the Civil and Human Rights Commission for a public meeting held on April 6, 1995 for the purpose of discussing the City's compliance with the Cambridge Employment Plan and receive an explanation of Civil Service.

In City Council May 1, 1995

*Report Accepted
&
Placed on file*