

WHERE DID THIS LAW COME FROM?

A HISTORY OF GENERAL STATUTE 95-98

JASON BURTON

DAVID A. ZONDERMAN

DEPARTMENT OF HISTORY

NORTH CAROLINA STATE UNIVERSITY

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The North Carolina law prohibiting collective bargaining among public sector workers, now known as General Statute 95-98, originated as a part of NC House Bill 118. Introduced in February 1959, HB 118 passed the House in May and then the Senate in June 1959. While much of the legislation covered by HB 118 is no longer on the books, the section pertaining to contracts between public sector workers and government bodies remains. Under the heading “Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions,” a prohibition which has been ruled unconstitutional, GS 95-98 appears with the title “Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.”¹ While the bill became law in June 1959, one must look at events in Charlotte the previous winter to find the historical and political roots of 95-98.

The *Charlotte Observer* reported on December 12, 1958, that Jimmy Hoffa had announced he would lead his Teamsters Union in an effort to bring ten million public workers, including policemen and firemen, into his organization. Both the Teamsters and the American Federation of State, County, and Municipal Employees (AFSCME, an affiliate of the AFL-CIO) targeted the Charlotte transportation and police departments for recruitment of new members. Charlotte City Manager Henry Yancey told the press that City Hall would stay out of the fray by letting the two unions fight for supremacy in the membership drive; Mayor James Smith, Yancey, and several City Council members

responded with a "hands-off policy." Yancey noted that the city neither recognized any union as the bargaining agent for city employees nor signed contracts with any union. Further, he said that written law and legal precedent barred municipal employees from going on strike.

Separate unions formed in Charlotte for the police, the firemen, and other city workers such as sanitation and transportation. The police union, AFSCME Local 1492, had just been created in October 1958 after years of organizing efforts, and spurred on by the replacement of the long-time police chief. None of these locals, however, had any established legal right to collectively bargain or to use a national union like the Teamsters to bargain for them.

Following a four-part feature series and an anti-union editorial in the *Charlotte Observer* on the unionizing effort among city employees in late December, the Charlotte Chamber of Commerce sent the City Council a resolution proposing that the city block any union membership among municipal employees, especially police. Both Yancey and Malcolm Seawell, Attorney General of North Carolina, announced that they personally opposed policemen belonging to a labor union. The idea of police unions seemed particularly unsettling to city and state leaders—organized police might go on strike or take the side of other strikers in labor disputes, a key tool of labor control might be lost.

The Charlotte City Council passed a resolution concerning municipal workers on December 31, 1958, stating they were "opposed to any organization of any employees by the Teamsters union." With two council members absent, the resolution passed by a 4-1 vote. A stronger resolution banning all city employees from all unions was withdrawn

when its sponsor realized his resolution did not have enough votes to pass. The resolution that did pass had no legal force; it merely showed the Council's opposition to Hoffa and the Teamsters.

Leaders of Charlotte's police and fire locals claimed that they were happy with the current situation in the city and did not want to join the Teamsters. The Mecklenburg County Police Chief said his officers did not want a union and that he personally did not believe policemen should have unions. On January 2, 1959, Hoffa announced that the Teamsters would withdraw their effort to organize the New York City police because of resistance from the mayor, police chief, and local non-union police groups. Ed Hargett, the local Teamsters representative in Charlotte, told the *Charlotte Observer* that his group would continue to enroll new members from the city transportation department but had no plans to organize the police. Ed Selvey, Chief of the Charlotte City Police Department, announced that he would not allow the Teamsters to organize the Charlotte police. The Teamster 'threat' was becoming a moot point, but anti-union sentiment continued to grow among Charlotte city leaders. Now the gate was open to discussing not only whether Teamsters could organize police, but whether any municipal worker could join a union.

The *Charlotte Observer* wrote in an editorial dated January 3, 1959: "a policeman's uniform and a union card don't mix....Attorney General Malcolm Seawell has said clearly that North Carolina cities have authority to forbid union membership. This is an issue the Council can't dodge. By simply doing nothing it is taking a stand - the wrong stand." Also on January 3, the local police and fire unions met to issue a

decree defending their organizations and applauding the City Council's restraint in not passing a resolution forbidding union membership among all city employees. They also emphasized that their groups had voluntarily adopted a no-strike clause in their charters.

Perhaps responding to the *Observer's* editorial, Yancey wrote Seawell on January 5, 1959, asking if a municipal government could legally prohibit policemen from joining a union. Yancey had first requested an opinion by telephone to the Assistant Attorney General, who told him to make the request in writing. Yancey's letter read as follows:

Dear Mr. Seawell:

We are disturbed at the present time by the question of labor unions among municipal personnel, with particular reference to our Police Department.

Mayor James S. Smith has asked me to write you and urgently request an opinion as promptly as possible concerning the following questions:

1. Does the City Council have the legal right to prohibit police and other peace officers from joining labor unions?
2. Does this authority, if it exists, extend to other City officials and employees?

We fully realize and appreciate the pressure under which your office is operating at this time; however, an early reply is urgently needed.²

On January 7, the Charlotte City Council—with all its members present and facing a growing chorus of anti-union statements and editorials-- voted to ban unionization of the city's police force and mandated that members of the local had until February 1, 1959 to withdraw from any labor organization or be subject to dismissal from the force. Charlotte labor leaders, including the heads of the police and fire locals, hinted that they might go to court over the legality of the Council's ban and its power to fire

unionized policemen. That potential lawsuit evaporated when Attorney General Seawell issued a formal opinion on the legality of public employees' unions on January 8, 1959; a document that confirmed his previously stated opposition to police unions.

In an eleven-page opinion, Seawell wrote that the city did indeed have the right to prohibit police from joining a union and could fire them if they insisted upon doing so. Likewise, the city could prohibit union membership of any city employee. Seawell also wrote that "neither the City nor any of its departments of government have any right to enter into any collective bargaining agreement dealing with wages, hours and working conditions of any public employees of the City of Charlotte." Furthermore, he submitted that the right-to-work law—which technically protects a worker's right to join or not join a union-- was inapplicable to public employees because it specifically addressed only private employees and employers.³ Following Seawell's opinion, the police local in Charlotte voted to disband itself on January 9, 1959, but asked the City Council to allow the firemen's local to continue.

The matter appeared to be resolved until Robert Cahoon, a Greensboro attorney, filed a lawsuit in Mecklenburg County on January 29, 1959, on the behalf of two anonymous Charlotte police officers. To give the court time to consider the legality of the City Council's ban, the suit called for an injunction preventing the Council from firing unionized policemen after February 1. Cahoon said the two anonymous Charlotte officers, John Doe and Richard Roe, needed to have their identity concealed because of harassment and pressure from non- and former unionized policemen. In addition, Cahoon said his clients needed to be anonymous since Chief Selvey could fire them.

Members of the former local said, "The disbandment was complete and absolute."

AFSCME later entered the suit against the City of Charlotte, Mayor James Smith, and the seven members of the City Council.

The Mecklenburg Superior Court did not grant the injunction but set a show-cause hearing for February 9, 1959; the city had to demonstrate why the injunction against their police union ban should not be granted. The judge then ruled at the hearing that Doe and Roe had to identify themselves and appear in court for the suit to proceed; if they did not, the union's case would be dismissed. Cahoon then argued that he represented Doe and Roe plus about ten others, and that about 170 of the 220 policemen in Charlotte had been members of the local. He claimed the local had "enjoyed good relations with City Hall until a police union flare-up in New York City 'scared' some local citizens into 'pressuring' members of City Council to eliminate the union." When neither Doe nor Roe appeared in court on February 12, 1959, the court dismissed the union's suit. Cahoon tried to amend his suit to name AFSCME as an equal plaintiff with the two anonymous officers, but the judge did not allow his amendment.⁴

While these legal and political events were unfolding in Charlotte, Mecklenburg County legislators were considering a state law that would 'solve' their local 'labor problem' by closing the door on all public sector labor organizing throughout North Carolina. Frank Snepp, Jr. was one of four state representatives from Mecklenburg County, the others being Ernest L. Hicks, Irwin Belk (of Belk department stores), and John P. Kennedy, Jr. Snepp served as a Marine Captain in World War II and graduated from law school before serving in the NC House. He later became a state superior court

judge in Mecklenburg County and a prominent member of the Mecklenburg County Bar Association. In a 1998 interview with a UNC law student for an oral history project on notable lawyers, Snepp recalled his days as a legislator. He said that when he got to the House, he could tell that there were a handful of representatives that pretty much ran things, and he decided that he wanted to be one of those with power. As an attorney, he took the lead on legal and judicial bills and deferred to other “experts” on matters he had little experience in such as agriculture. Snepp believed that a law barring public employees’ unions fell under his political jurisdiction in the House.

Snepp set out to make a law that would prevent all public employees (not just police and fire personnel) from collectively bargaining with the government and even from belonging to a union. Snepp said, "The collective bargaining principle is the target of this bill." He wrote HB 118 with Ernest Hicks, a fellow representative from Mecklenburg County, as a co-sponsor. Several other representatives also served as co-sponsors: James Bowman (Brunswick County), Marcellus Buchanan (Jackson County), Hugh Johnson (Duplin County), Herbert Hardy (Greene County), C. Blake Thomas (Johnston County), and Ashley Murphy (Pender County). The legislators who sponsored the bill represented both urban and rural areas across the state. HB 118 was introduced in the NC House, passed its first reading on February 19, 1959, just one week after the lawsuit in Charlotte was dismissed, and was referred to the Committee on Manufacturers and Labor for further consideration.⁵

Governor Luther Hodges said little to the press about the bill, only implying on one occasion that he didn't see its necessity from a legal standpoint. In Hodges' mind,

the issue had already been decided with Seawell's January opinion. Snepp, however, was quick to inform Hodges about the need for his bill. On February 24, 1959, Snepp wrote the Governor:

Dear Governor:

I notice this morning in the Raleigh News & Observer, Under the Dome column, that you had commented with respect to House Bill 118 which would prohibit union membership by public employees, to the effect that you did not know whether such a law was necessary in view of the ruling which has been made by the Attorney General.

As you may be aware, a suit has been brought against the Council of the City of Charlotte by a union asking to enjoin the City from prohibiting union membership. One of the grounds upon which the union relies is the North Carolina "Right to Work" law. This statute, of course, provides that no man can be prohibited from joining a union or required to join a union as a condition of employment. This statute is general in its terms and makes no exception as to public employees.

In at least two federal cases with which I am familiar courts have held that a right to work law means what it says and that even public employees cannot be prohibited from joining a union.

I feel it very important that State policy on this matter be made explicit by the enactment of a statute.

The bill which I have proposed would do three things:

- (1) It would prohibit membership by a public employee in a labor union or other organization which had as its purpose collective bargaining on behalf of its members.
- (2) It would prohibit any unit of government or governmental agency from entering into a contract with a labor union with respect to wages, hours or conditions of employment.
- (3) It would amend the right to work law to provide that its provisions did not cover public employees.

I have discussed this proposal with the Attorney General and find him generally in agreement with the objectives of the bill.

I hope that this information will be of some value to you in forming an opinion as to the measure.⁶

Governor Hodges agreed in his reply:

Thank you very much for your recent letter explaining the purpose of your bill prohibiting union membership by public employees. I was not aware that we had the legal question at issue which you described in your letter, and I think you are entirely correct that State policy on this matter should be clarified by statutory enactment.⁷

On May 11, 1959, Representative Edward Wilson (Caswell County), Chair of the Committee on Manufacturers and Labor, gave his committee's report on HB 118 to the full House. Rejecting the original bill, he presented a substitute bill that was adopted and placed on the calendar for consideration on May 14, 1959. The committee's substitute bill made one crucial modification: an additional clause at the end of 95-85 (the paragraph on union membership) specified policemen and firemen as the public employees prohibited from joining unions. The new clause read, "The terms 'employee', 'public employee' or 'employees' whenever used in this Section shall mean any regular and full-time employee engaged exclusively in law enforcement or fire protection activity." This change may have been made because the committee believed that there would be more legislative support for keeping police officers and firemen out of unions rather than a blanket prohibition on all public workers. Some legislators probably feared a fire or police strike, with its attendant threats to public safety and images of chaos in the streets, despite the fact that local police and fire unions often had no-strike clauses in their charters. In addition to the new clause focusing on police and firemen, the

committee's substitute bill condensed 95-86 (the paragraph on labor contracts) into the exact language that now exists as 95-98 regarding contracts and collective bargaining.

Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect.⁸

Ed Kemp (Guilford County) led an effort to amend the bill to exclude firemen from the ban on union membership. Some legislators believed that unionized firemen would not have the same potential conflict of interest as unionized police if a labor protest produced a violent reaction (as often happened in North Carolina) and led to the intervention of law enforcement. Moreover, banning fire unions might lead to the loss of insurance coverage provided by some locals, and leave municipalities to pick up the tab. Kemp's amendment failed, and many of the legislators who voted for his amendment in turn voted against the bill. HB 118 passed 75-31 on its second reading on May 19, 1959.

Other opponents argued that the state should not tell local government how to treat their employees.⁹ Citing a violent strike at the Harriet-Henderson Cotton Mill in Vance County (lasting from November 1958 until August 1959)¹⁰, Snepp said, "We've had to call out the National Guard...is that local?" James Bowman (Brunswick County), one of the bill's co-sponsors, stated that if Jimmy Hoffa had enough power to influence the federal government, then his Teamsters could certainly affect state and local government. The bill then passed its third and final reading on May 20 and was sent to

the Senate. Snepp told the Raleigh *News & Observer* that "his bill would take care of the situation 'while the problem is a relatively small one.'"

On May 22, 1959, the NC Senate passed the bill on its first reading and sent it to the Committee on Manufacturing, Labor, and Commerce. That same day, the Raleigh *News & Observer* editorialized that firemen should not be prevented from belonging to a union, although banning police locals might not be a bad idea. The editorial drew on some of the objections previously raised in the legislature. "Since policemen are law enforcement officers, treating them differently from other city and county employees may be justified. Firemen, however, do not preserve the peace. ...There seems to be no reason for anyone to single out firemen from other employees. And there is an excellent reason for not doing so. The union, to which firemen belong in Raleigh and six other North Carolina cities, has a constitutional provision against strikes and its principal function is to insure its members. Enactment of the bill into law would mean that firemen in these seven cities would lose insurance premiums they have been paying for years. This bill is directed against all labor unions, but hits only two. Since the constitution prevents the outlawing of all labor unions, opponents of all unions should not vent their frustration against firemen who have served their communities faithfully and are entitled to a better reward than having their life insurance taken away from them." Despite the *News and Observer's* objections, the Senate committee recommended the bill without amendment and gave a favorable report on June 2. The bill passed its second and third readings on June 3 despite the opposition of James Simpkins (Craven County). He charged that Charles Cannon (owner of Cannon Mills in Cabarrus County) and John Cooper (owner of the Harriet-Henderson Mill) had too much anti-labor influence on the

legislature. Simpkins tried but failed to return the bill to another committee. Passing both houses of the General Assembly, HB 118 was finally enrolled on June 4, 1959, to be signed by Governor Hodges.¹¹

Not surprisingly, the bill was subject to numerous court challenges in the years to follow. Section 95-97—the original 95-85 amended to prohibit fire and police officers from becoming members of labor unions--was found to be unconstitutional in the 1969 court case *Atkins v. City of Charlotte*. State Law 1998-217 officially repealed GS 95-97 in 1998. But other portions of HB 118 were affirmed by the courts. In *Winston-Salem/Forsyth County Unit of North Carolina Association of Educators v. Phillips* (1974), the court upheld the 95-98 statute by ruling that the teachers' First Amendment right of association did not require state government to negotiate and enter into contract with the teachers' group. The court found that the teachers' had the legal right to form a group, but the legal existence of that group did not include an ability to collectively bargain with the state.¹²

Thus, the law that became 95-98 began with officials in Charlotte frightened about Jimmy Hoffa's threat to organize the city police. The anti-union efforts quickly expanded beyond this immediate issue and, stirred up by the *Charlotte Observer's* reporting and editorials in December 1958 and January 1959, challenged the right of any public employee to join a union. Mecklenburg representative Frank Snapp then wrote a law to prevent all public employees (not just police and firemen) from collectively bargaining with the government and even from belonging to a union. The bill that ended up being passed barred policemen and firemen from joining a union, and prohibited all

public sector employees from bargaining collectively with units of local or state government. The provision outlawing contracts between public workers and governmental units remains to this day a cornerstone of North Carolina's public sector labor laws, and a continuing challenge to labor activists throughout the state.

SOURCE NOTES

1. House and Senate Journals, 1959 (State Library of NC); North Carolina General Statutes 95-98.
2. The *Charlotte Observer*, December 1958-February 1959; Yancey Letter to Seawell, Attorney General Files, 1959 (State Archives).
3. The *Charlotte Observer*, January-February 1959; Seawell Opinion/Reply to Yancey, Attorney General Files, 1959 (State Archives).
4. The *Charlotte Observer*, January-February 1959.
5. House and Senate Journals, 1959 (State Library of NC); Interview with Frank Snapp, UNC Law School Library.
6. House and Senate Journals, 1959 (State Library of NC); the *Charlotte Observer*, January-February 1959; Snapp Letter to Governor Hodges, Governor Luther Hodges Papers (State Archives); Legislative Files, North Carolina General Assembly, 1959, HB 118 (State Archives).
7. Hodges Reply to Snapp, Hodges Papers (State Archives).
8. House and Senate Journals, 1959 (State Library); Legislative Files, North Carolina General Assembly, 1959, HB 118 (State Archives).

9. Raleigh *News & Observer*, May 1959.

10. Throughout the legislative life of HB 118, there was a major strike in progress at the Harriet-Henderson cotton mills in Vance County, NC. That strike began in November 1958 and did not end until August 1959. Marked by "recalcitrance and violence on both sides," Governor Hodges concluded that the walkout represented the "most tragic single matter" in his administration. Press coverage of the turbulent situation appeared regularly in the NC newspapers and even garnered occasional attention in national newspapers such as the *Chicago Tribune*. Governor Hodges' decision to use highway patrolmen and then the National Guard to quell violence in Henderson earned strong praise and criticism from observers within and outside of the town—and may have influenced how the legislature considered police unions in particular. Thus, the actions of the 1959 General Assembly on HB 118 should be considered with the Henderson strike in mind, even though the proximate cause of the bill was the effort to organize the Charlotte police department and the consequences of that in December 1958-February 1959. Likewise, other strikes at the time should be kept in mind for their possible influence on the legislators' position or perspective on labor. The bus drivers on the Raleigh city bus lines were on strike in December 1958; the strike was covered in both the *Raleigh News & Observer* and the *Charlotte Observer*. Flight engineers at Eastern Airlines were also on strike in December. In the spring of 1959, various typographical unions in Raleigh went on strike. Governor Luther Hodges Papers (State Archives); *Raleigh News & Observer* and the *Charlotte Observer*.

11. The Raleigh *News & Observer*, May-June 1959. Ironically, the same legislative session that approved HB 118 also passed a state minimum wage law (HB 121), after a decade of failing to do so. Governor Hodges even spoke publicly in support of the law, which protected North Carolina workers not covered by the federal Fair Labor Standards Act of 1938. North Carolina was the first southern state to pass such a minimum wage law.

12. GS 95-98 is followed by 95-98.1 that prohibits strikes by public employees. 95-98.2 defines a “strike.” GS 95-99 then provides that any violation of GS 95-98 is a Class I misdemeanor; North Carolina General Statutes; Michael Okun's 1980 article in *North Carolina Law Review*.

APPENDIX

HB 118 in its original form read as follows:

A BILL TO BE ENTITLED AN ACT TO PROHIBIT STATE EMPLOYEES AND EMPLOYEES OF CITIES, TOWNS AND OTHER AGENCIES AND UNITS OF GOVERNMENT FROM BECOMING MEMBERS OF TRADE UNIONS OR LABOR UNIONS.

The General Assembly of North Carolina do enact:

Section 1. Chapter 95, as the same appears in the 1958 Replacement Volume 2C of the General Statutes, Replacement 1958, is hereby amended by adding thereto a new article, which shall be designated as “Article 11”, and which shall read as follows:

“Article 11.

“Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions

“G.S. 95-85. Employees of units of government prohibited from becoming members of trade unions or labor unions. – No employee of the State of North Carolina or of any agency, office or institution thereof, nor any employee of a city, town, county or other municipality, or agency thereof, nor any public employee or employees of an entity or instrumentality of government shall be, become or remain a member of any trade union, labor union or labor organization which has as its purpose or one of its purposes collective bargaining upon behalf of its members with respect to grievances, labor disputes, wages or salary, rates of pay, hours of employment or conditions of work. Nor shall such employee organize, or aid, assist or promote the organization of any such trade union, labor union or labor organization, nor shall such employee affiliate with any such organization in any capacity whatsoever.

“G.S. 95-86. Labor contracts between units of state government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal. – Any agreement, combination, understanding or contract, whether the same shall be oral or written, between the governing authority of any city, town, county or other municipality or between any agency, unit or instrumentality

thereof or between any agency, instrumentality or institution of the State of North Carolina and any labor union, trade union or labor organization, relating to the grievances, labor disputes, wages or salary, rates of pay, hours of employment, maintenance of membership or conditions of work of any public employees of such city, town, county or other municipality, or agencies or instrumentalities of government, are hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect. No public officer of the State or of any subdivision of government of the State or of any agency or instrumentality of the State or of any city, town, county or other municipality or of any agency or instrumentality thereof, whether acting singly or as a member of any board, commission or committee, shall negotiate, aid, abet or assist in or attempt to negotiate, either directly or indirectly, any contract, agreement or understanding, with or between any such agency, instrumentality or unit of government and any labor union, trade union or labor organization concerning grievances, labor disputes, wages or salary, rates of pay, hours of employment, maintenance of membership or conditions of work of any public employees, employees of the State of North Carolina, or employees of any city, town, county or other municipality or employees of any agency or instrumentality thereof.

“G.S. 95-87. Penalty for Violation of Article. – Any violation of the provisions of this Article is hereby declared to be a misdemeanor, and upon conviction, plea of guilty or plea of nolo contendere shall be punishable in the discretion of the Court.

“G.S. 95-88. No provisions of Article 10 of Chapter 95 applicable to units of government or their employees. – The provisions of Article 10 of Chapter 95 of the General Statutes shall not apply to the State of North Carolina or any agency, institution, or instrumentality thereof or the employees of same nor shall the provisions of Article 10 of Chapter 95 of the General Statutes apply to any public employees or any employees of any town, city, county or other municipality or the agencies or instrumentalities thereof, nor shall said Article apply to employees of the State or any agencies, instrumentalities or institutions thereof or to any public employees whatsoever.”

Sec. 2. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect thirty days from and after its ratification.